United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

BPLS

76-7618

PRINTED

In The

United States Court of Appeals

For The Second Circuit

THE GOVERNMENT OF INDIA AND THE FOOD CORPORATION OF INDIA,

Plaintiffs-Appellants,

-against-

COOK INDUSTRIES, INC. AND COOK AND COMPANY,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
JUL 25 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

On Appeal from United States District Court for the Southern District of New York

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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10779

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES CITED..... (i)

OTHER AUTHORITIES..... (i)

STATEMENT OF ISSUES..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION BY DISQUALIFYING FREDERICK W. MEEKER AND THE LAW FIRM OF DELSON & GORDON FROM CONTINUING TO REPRESENT PLAINTIFFS IN THIS ACTION 10

CONCLUSION..... 18

TABLE OF AUTHORITIES

CASES CITED	PAGE
Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973).....	11, 12, 13
Gas-a-Tron of Arizona, et al. v. Union Oil Co. of California, 534 F.2d 1322 (9th Cir. 1976).....	14
Hull v. Celanese Corp., 513 F.2d 568 (2d Cir. 1975).....	11, 12, 13
Kesselhaut v. U. S., 45 USLW 2569.....	16, 17
NCK Organization, Ltd. v. Bregman, 542 F.2d 128 (2d Cir. 1976).....	11, 13
Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 370 Fed. Supp. 581 (E.D.N.Y. 1973).....	15, 17
Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d 751 (2d Cir. 1975).....	12, 13, 15

OTHER AUTHORITIES	
Opinion No. 889, Committee on Professional and Judicial Ethics, Bar Association of the City of New York, November 19, 1976, RECORD, Vol. 31, pp. 552, 565.....	17

STATEMENT OF ISSUES

Did the District Court abuse its discretion by disqualifying the law firm of Delson & Gordon and Frederick W. Meeker, an associate of that firm, from continuing to represent the plaintiffs in this action?

STATEMENT OF THE CASE

The answering brief of the defendants contained numerous distortions of the facts before the court and urged that defendants be given the right to cause the discharge of plaintiffs' chosen counsel without the benefit of any evidence to sustain their position.

In both the single claim referred to herein as the "soy bean cases" and in the present action, damages are sought for failure to deliver the quantities certified as being delivered to the respective plaintiffs at the load-ports. However, this is where the similarity ceases, and while there is a generic relationship between the cases, the cases are not "substantially related." Contrary to the assertion set forth in the footnote on pages 6 and 7 of the defendants' brief, there is a substantial factual dissimilarity between the so-called soy bean cases and the present action before the court. The present action concerns the

shipment of only wheat and sorghum in bulk from a number of ports throughout the United States of America as opposed to soy beans (A.18-32).* The purchase contract provisions, the purchasers, dates of loading and purchase, carriers and vessel are not the same in both cases (A 18-32). Only three of the 153 shipments complained about were loaded at the defendants' elevator in Reserve, Louisiana (A 18-32). The remaining 150 shipments were loaded at elevators operated by other companies to satisfy the Cook contracts (A 18-32).

Furthermore, in the soy bean cases, the inspection for quality was done not only by the Destrehan Board of Trade but was supervised by the United States Department of Agriculture in accordance with the existing simultaneous appeal procedure (381a).** No such appeal procedure was used with respect to shipments in the present action (A 18-32).

In the present action contrary to the assertion of the defendant-appellees, only three out of the 153 shipments complained about were inspected by the Destrehan Board of Trade (A 18-32). The loading procedures which may exist at Cook's sole elevator located in Reserve, Louisiana, concern only 3 out of the 153 shipments complained about. In addition, there has been no demonstration by appellees

---

*All references with prefix "A" are to the Addendum to Plaintiff-appellants' Main Brief.

**All references followed by "a" refer to the Appendix.

that the loading procedures for soy beans are the same as the loading procedures for wheat or sorghum. Further, in the Soy Bean cases, the sole issue before the court was the authenticity of the certificates of weight issued by the licensees of the United States Department of Agriculture. Contrary to the present action before the court, there was never any question in the Soy Bean Cases as to the fraudulent or collusive issuance of the weight certificates (376a-379a). From the foregoing, it can be seen that the two cases are related only in the most general way and the substantial relationship urged by defendants herein is non-existent.

The full statement of Judge Stewart in the course of his decision in the soy bean cases denying Cook's motion for summary judgment was:

> "Since the primary issue in this case appears to be the weight of the soy beans when they were loaded on to the M/S NORMA, the affidavits of Messrs. Meeker and Willis are not sufficient, since they were undoubtedly not present when the soy beans were weighed and loaded." (352a)

See incomplete quote set forth on page 8 of Defendant Cook's answering brief.

Judge Stewart's statement, taken in its proper context, does not indicate that the defendants have raised a substantial issue as to the accuracy of the certificates. Rather, when one considers the procedural deficiencies

referred to by the purchasers and cited by Judge Stewart in prior portions of his decision (351a-352a), and the fact that it was Cook's burden on the motion to conclusively resolve all issues by documents, it is clear that Judge Stewart has merely indicated that the weight and grade certificates issued by the licensees of the United States Department of Agriculture were not properly authenticated (350a-352a).

The very same documents contained in the initial motion for dismissal of the complaint by Cook were incorporated in the stipulation of facts, and the previously asserted objections to their authenticity by the purchasers not mentioned (378a, 391a-398a). Judge Stewart in his decision based upon the stipulated record dismissed the complaints against Cook (446a-448a).

Much is made by the defendants of six articles which appeared in the New York Times referred to at pages "10" and "11" of the defendants-appellees' answering brief herein. The appellees have failed to set forth copies of the articles for the court to review and the court as well as plaintiffs must speculate as to their contents. The most that defendants may make of these articles is that Mr. Meeker, as well as millions of readers of the New York Times had access to such articles. No claim of confidentiality may be based thereon. Mr. Meeker under oath stated that he

was asked to obtain the articles by Mr. Reams, another attorney for Cook Industries, Inc. who practiced in Memphis, Tennessee. Mr. Meeker arranged, with the approval of Mr. O'Brien of the Hill Rivkins firm, to have a clerk obtain back issues of the New York Times although he has no recollection of having forwarded the articles to Mr. Reams (184a-185a). These articles played no role in the soy bean cases. The stipulation of facts upon which the soy bean cases were submitted to Judge Stewart is dated July 15, 1975. Back issues of the New York Times were apparently obtained on July 8, 1975 (163a and 164a). Mr. Meeker does not recall whether he even read the particular back issues. It is of great significance that even after publication of the said newspaper articles, the purchasers conceded the authenticity of the certificates of weight in question, and made no reference in the stipulation of facts to any possible fraud or collusion on the part of Cook in the issuance of such weight certificates (378a).

The references to the newspaper articles by defendant-appellees demonstrates how the court below has abused its discretion by arriving at conclusions based upon unfounded speculation. For example, Judge Ward concluded:

> "It is reasonable to assume that Mr. Meeker conducted some investigation or inquiry before deciding to obtain Mr. Willis', and not Mr. Duffy's affidavit." (203a, 209a)

The reasoning of the learned District Judge was: in view of the fact that Mr. Duffy was mentioned in an indictment by the United States against Cook, which was issued approximately one year after the execution of said stipulation of facts, Mr. Duffy's affidavit was not used (202a, 203a and 209a). Defendants emphasize at page 11 of their answering brief, however, that the said newspaper articles mention the name of the Destrehan Board of Trade "(of which Daniel X. Willis was its chief weighmaster)". Surely then if Mr. Meeker were seeking to cover anything up with respect to Cook's fraud, contrary to the suggestion of the learned District Court Judge he would not have used the affidavit of Mr. Willis. This particular incident underlines the fact that the defendants have asked the courts herein to engage in pure speculation without factual foundation.

The court below further relies upon the affidavit not based upon personal knowledge of Cook's present counsel who referred to a scrap of paper which allegedly contained the name of a Cook employee and two U.S. Department of Agriculture employees as well as certain unidentified information (161a, 203a). The defendants have kept this scrap of paper secret. It is not ascertained who the persons named are, what their duties were, what subjects were spoken about, if any, or who prepared or placed the paper in what file (203a). It is respectfully submitted that the require-

ment of secrecy covering this scrap of paper is a sham, and it cannot be believed that its contents will justify disqualification of plaintiffs' lawyers or that the secrecy claimed for it is justified.

Mr. Meeker has stated under oath that he did not conduct any investigation; nor did he gain knowledge as to the loading procedures of the defendant Cook; nor did he interview any Cook personnel at Reserve, Louisiana (58a-76a, 181a-189a). Further, there have been no facts set forth in the record to contradict the statements by Mr. Meeker. It is pointed out that no discovery conducted by the parties in the soy bean cases related to the loading procedures of Cook. Furthermore, any consultation with the attorneys for Cook related to the authenticity of the load-port documents and not to the loading procedures at the Cook elevator at Reserve, Louisiana. In addition, the consultation with the expert, Jack Berg, did not concern "shortages" but concerned the percentage of "normal shrinkage for the specific commodity [Soy Beans] and the shipment particulars..." Jack Berg was Vice President of Continental Grain Company (412a).

Mr. Meeker states as follows:

> "My discussions with Mr. Berg related solely to the shrinkage of soy beans and we did not discuss the loading procedures or any other activity of personnel of Cook." (73a)

The soy bean actions and the present action before the court are related only in the generic sense that both concern damages for the failure to deliver commodities. The type of commodity involved is different; the loading procedures for the commodities are not demonstrated to be the same; the elevators involved with the exception of three shipments are different; the inspection entities licensed by the United States Department of Agriculture with the exception of three shipments are different; and the issues involved in the cases are different both as to scope and as to nature. The soy bean cases were directed at the carrier and the sole litigated issue in the case with respect to defendant Cook Industries Inc. concerned technical and dilatory challenges to the authenticity of the weight certificates.

Mr. Meeker advises that he has no recollection of having read the six articles which appeared in the New York Times. Mr. Meeker was never consulted, and to the best of his knowledge the Hill Rivkins firm was never consulted with respect to any governmental investigations of Cook's fraud or with respect to any claims of fraudulent actions on the part of Cook.

The documents attempted to be submitted to the court in secret were submitted for the sole purpose of

creating a prejudicial atmosphere. Defendants' offer was rejected by the court. See DA 60-61, where the court below stated:

> "More importantly, the court found it unnecessary and, indeed improper, to inspect the in camera submission."

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION BY DISQUALIFYING FREDERICK W. MEEKER AND THE LAW FIRM OF DELSON & GORDON FROM CONTINUING TO REPRESENT PLAINTIFFS IN THIS ACTION.

There is no question that the order of disqualification of Delson & Gordon was based solely upon a determination by the court below that the soy bean cases were substantially related to the present action. Judge Ward stated:

> "The issue before this court then is whether the former and present actions against Cook are substantially related." (199a)

The court then proceeded to set forth its method of arriving at the substantial relationship as follows:

> "Thus, if Mr. Meeker might have acquired related information then the matters are substantially related and he and Delson & Gordon must be disqualified." (emphasis supplied) (200a)

The court below further refined what it believed to be the issue in the case as follows:

> "A. Are the Matters Substantially Related?
>
> Mr. Meeker and Delson and Gordon strenuously argue that although the instant action and the former actions are superficially similar inasmuch

> as they each relate to alleged shortages by Cook at its grain elevator in Reserve, Louisiana, 'in reality' they are unrelated because, they claim, the alleged shortage in the Soybean Actions was never actively litigated; consequently, Mr. Meeker did not have occasion to investigate Cook's loading procedures or conduct anything more than minimal discovery. This argument addresses the critical issue." (200a)

Thus the "critical" issue in the mind of the court below was whether or not Mr. Meeker had occasion to investigate Cook's loading procedures at Cook's elevators at Reserve, Louisiana, or conduct anything more than a minimal discovery. The court, based upon unfounded speculation, concluded that in fact Mr. Meeker conducted an investigation and engaged in something more than minimal discovery. The court, confusing the appropriate legal standard, concluded that because in its mind something might have happened therefore the two cases were substantially related, and it was beyond the power of plaintiff to prove that it did not happen.

The defendants assert that this standard, which is obviously susceptible of great abuse in application, has been approved more recently in the following three cases: Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973); NCK Organization, Ltd. v. Bregman, 542 F.2d 128 (2d Cir. 1976); Hull v. Celanese Corp., 513 F.2d 568 (2d Cir. 1975). Two of those three cases, Hull v. Celanese,

supra, and Emle Industries, Inc. v. Patentex, supra, were referred to and digested by Judge Moore writing for the court in Silver Chrysler Plymouth v. Chrysler Motors Corp., 518 F.2d 751 (2d Cir. 1975). Judge Moore, in discussing the applicable standard for a determination as to whether or not cases are "substantially related" in the context of a disqualification motion stated as follows:

> "But as the present Chief Judge of the Second Circuit Court of Appeals noted twenty years ago in U.S. v. Standard Oil Company, 136 Fed. Supp. 345, 355 (S.D.N.Y. 1955): 'unfortunately, the cases furnish no applicable guide as to what creates a 'substantial' relationship.' The cases available at that time were cases in which the relationship was 'patently clear'.
>
> Over the intervening years the cases in which disqualification has been granted have also fallen into, or have come close to, the 'patently clear' category. A review of some of the more recent decisions is illustrated." Silver Chrysler Plymouth v. Chrysler Motors Corp., 518 F.2d at 754.

Judge Moore then referred to Hull v. Celanese, supra, and Emle Industries, Inc. v. Patentex, Inc., supra, as examples of cases where the relationship was not substantially related but in fact were identical. Thus, in Hull, supra, Judge Tenney held:

> "Also, here the matter at issue is not merely 'substantially related' to the previous repre-

> sentation, rather, it is exactly the same litigation." 513 F.2d at 571.

In Hull, the plaintiffs' counsel was disqualified because the plaintiff previously had acted as counsel for the defendant in the same case.

With reference to Emle, supra, Judge Moore quoted Judge Kaufman:

> "[T]here are matters in controversy in each case -- both the nature and scope of control, if any, exercised by Burlington over Patentex -- that are not merely 'substantially related' but are in fact identical." 478 F.2d at 572.

In both of these cases, Hull and Emle, the respective courts quoted the "might have acquired information" test not for the purpose of establishing that the two cases were "substantially related" but merely for the purpose of indicating that once it was established that the issues in the cases were identical the lawyer must be disqualified. Were this not the fact, Judge Moore's comment in 518 F.2d at 754 that the available cases still furnish no guide as to how to determine whether cases are "substantially related" would have no meaning.

The facts in the NCK Organization, Ltd. case are also totally different from the cases before the court. The court stated the problem as follows:

> "...the question presented is whether a law firm may represent a corporate official against his former corporate employer when the firm and the client have both consulted with the former corporate house counsel on subjects at issue in the suit and the latter's testimony may bear on those issues." 542 F.2d at 130.

Thus, the issues involved concern representation with respect to an issue which concerned the same parties, the same contract and are thus in all respects identical. Thus, the court again in applying the "might have acquired information" test did not do so to determine that the matters were substantially related but it was cited to establish the presumption of the disclosure of confidences once it has been determined that the matters were identical.

In each of the cases cited by defendants, the issue is not whether the former and new matter were substantially related because in each case they were identical.

It cannot be believed that this court would subscribe to a standard which would disqualify attorneys based on sheer speculation. Such a standard is arbitrary and capricious and clearly does not constitute due process of law. Gas-a-Tron of Arizona, et al. v. Union Oil Co. of California, 534 F.2d 1322, 1325 (9th Cir. 1976).

There is no case of record in which the attorneys have been disqualified in the absence of facts in the record in support of the disqualification, either by establishing

that the issues in litigation are identical or that in fact the disqualified attorney had access to the confidences of the former client.

The facts in the record before the court do not satisfy the high standard of proof required to disqualify a firm because of the alleged participation of a junior associate.

> "The persuasiveness and detail of the proof required will thus vary inversely with the status of the lawyer in the firm in the prior litigation." Silver Chrylser Plymouth, Inc. v. Chrysler Motors Corp., 370 Fed. Supp. 581, 586, 587 (E.D.N.Y. 1973)

Furthermore, Mr. Meeker should not be required to achieve an unobtainably high standard of proof in trying to prove that he did not receive or have access to confidential information. It is often impossible to prove a negative. Silver Chrylser Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d 751, 754 (2d Cir. 1975).

It is quite obvious that it is not necessary for the defendants to establish Mr. Meeker's access to related confidences by revealing what those confidences were. In almost every case where there has been disqualification, affidavits based on personal knowledge were submitted describing the activities and subject matter of discussions had. In the present case, the defendants have refused to

submit affidavits based on personal knowledge. No satisfactory reason is given why such affidavits have not been submitted.

In any event, in camera proceedings should not be held in total secrecy. Plaintiffs' counsel should be present. The public may be excluded, of course, and the record sealed. Defendants contend that plaintiffs' counsel should be disqualified because they are already the recipient of the so-called confidential disclosures. Surely, no further harm can come from plaintiffs' counsel's participation at the hearing or review of documents. No such disclosures in fact were made as suggested. Defendants refer to an in camera presentation only to create an atmosphere of suspicion in the mind of the court.

A possible resolution of the objections of the defendants to the continued representation of Delson & Gordon as attorneys for the plaintiffs would be the segregation of Frederick W. Meeker from all matters concerning the action against Cook or any other action which may be deemed related to proceedings against Cook, thus permitting other members of the firm of Delson & Gordon, who have had no prior connection with Cook, to continue the representation. Such approach was approved by the United States Court of Claims in Kesselhaut v. U.S., 45 USLW 2569. The United

States Court of Claims permitted a firm to continue a representation with respect to an action in which possibly there would have been disqualification due to the association of a former government attorney with the firm. The court permitted the firm to continue the representation with the understanding that the former government attorney was segregated from the matter at hand. The rationale of the decision was the opinion of the Court of Claims that government attorneys would be denied access to positions in private practice with law firms if this procedure could not be used. Judge Weinstein in Silver Chrysler Plymouth Inc. v. Chrysler Motors Corp., 370 Fed. Supp. 581, 589-591 (E.D.N.Y. 1973) made a similar comment in suggesting that the court avoid a disqualification policy by which young associates would become captives of large firms representing large clients in specialized areas of the law. This would result if the associates could never become associated with firms which represent interests adverse to those large clients.

The United States Court of Claims in Kesselhaut, supra, 2590 relied in part for its decision upon Opinion No. 889, Committee on Professional and Judicial Ethics, Bar Association of the City of New York, November 19, 1976, RECORD, vol. 31, pp. 552, 565.

CONCLUSION

The District Court abused its discretionary power in disqualifying Mr. Frederick W. Meeker and Delson & Gordon as counsel for plaintiffs. The judgment of the District Court should be reversed.

Dated: New York, New York
July 22, 1977

Respectfully submitted,

DELSON & GORDON
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Norman Moloshok
Alvin H. Meadow
Of Counsel

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
SECOND CIRCUIT

GOVERNMENT OF INDIA AND THE FOOD CORPORATION OF INDA,
PLAINTIFFS_Appellants.

- against -

COOK INDUSTRIES, INC., AND COOK & CO.,
Defendants-Apellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, Reuben A. Shearer, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York, New York 10030.

That on the **25th** *day of* **July** *19* **77** *at* **120 Broadway New York, New York**

deponent served the annexed **Reply Brief** *upon* **Fried Frank Harris Shriver & Jacobson, Esqs** 2

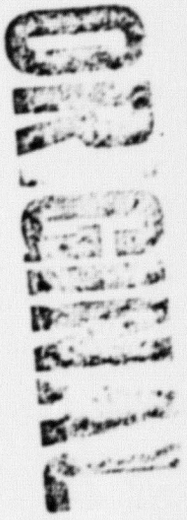
the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this **25th** *day of* **July,** *19* **77**

Reuben A. Shearer

Reuben A. Shearer

76-7618



In The

United States Court of Appeals

For The Second Circuit

B

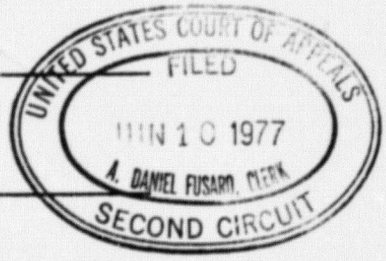
THE GOVERNMENT OF INDIA AND THE FOOD CORPORATION OF INDIA,

Plaintiffs-Appellants,

-against-

COOK INDUSTRIES, INC. AND COOK AND COMPANY,

Defendants-Appellees.



JOINT APPENDIX

Volume I, pp. 1a-224a

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	1a
Summons and Complaint (Filed May 3, 1976).	4a
Notice of Motion to Disqualify Delson & Gordon and Affidavit of Victor S. Friedman with Exhibits Annexed	19a
Stipulation Extending Defendants' Time to Answer to September 30, 1976	57a
Affidavit of Frederick W. Meeker in Opposition to Motion to Disqualify with Exhibits Annexed	59a
Affidavit of Norman Moloshok in Opposition to Motion to Disqualify with Exhibits Annexed	140a
Defendants' Reply Affidavit to the Answering Papers of the Plaintiffs with Exhibits Annexed	155a
Plaintiffs' Rebuttal Affidavit to Defendants' Motion to Disqualify	181a
Stipulation and Order Extending Defendants' Time to Move or Answer the Complaint to November 1, 1976	190a
Stipulation and Order Extending Defendants' Time to Move or Answer the Complaint to December 1, 1976	192a

Contents

	Page
Memo Endorsed on Motion Papers	194a
Opinion of Judge Ward on Disqualification Motion	195a
Stipulation and Order Modifying Order of Court Requiring Substitution of Plaintiffs' Counsel	211a
Notice of Appeal	214a

SOY BEANS CASES*

Docket Entries	221a
Complaint (Filed January 16, 1973)	226a
Answer of Cook Industries-73 Civ. 251 (Filed April 27, 1973)	230a
Notice of Motion (Filed May 23, 1973) and Affidavit of F. O'Brien to Stay Action Pending Arbitration	233a

---

* The District Court relied upon the entire record in these cases and portion of the record is reproduced by agreement.

Contents

	Page
Memo of Law by F. O'Brien in Support of Motion to Stay Action	239a
Reply Memo of Law by F. O'Brien in Support of Motion to Stay Action	243a
Memo of Law by F. O'Brien in Support of Defendant's Motion to Stay on Reargument	247a
Third Party Complaint by Austin Navigation Corp. Ltd. Against Cook Industries, Inc. (Filed July 18, 1973)	254a
Answer by Defendant Austin Navigation Corp. Ltd. to Complaint of Plaintiff (Filed July 18, 1973)	263a
Letter from Austin Navigation Corp. Ltd. Re: Pre-Trial Conference and Shrinkage	269a
Notice of Motion (Filed January 14, 1974) by Cook Industries, Inc. and Affidavit of F. W. Meeker to Dismiss Action with Exhibits	271a
Affidavit of Daniel X. Willis	305a
Memo of Law by F. W. Meeker in Support of Motion to Dismiss	307a
Amended Third Party Complaint by Austin Navigation Corp. Ltd. Against Cook Industries, Inc. (Filed January 30, 1975)	314a

Contents

	Page
Answer of Defendant and Third Party Plaintiff to Requests for Admissions by Cook Industries, Inc. (Filed February 1, 1974)	318a
Affidavit of Daniel Sullivan in Opposition to Motion for Summary Judgment with Exhibit Annexed	321a
Plaintiffs' Memo of Law in Opposition to Motion for Summary Judgment	327a
Statement by Defendant and Third Party Plaintiff Pursuant to Rule 9(g)	332a
Affidavit of Peter J. Zambito in Opposition to Motion for Summary Judgment with Exhibit	334a
Defendant and Third Party Plaintiff's Memo of Law in Opposition to Motion For Summary Judgment	342a
Statement of Plaintiff Pursuant to Rule 9 (g)	348a
Decision by Judge Stewart Denying Motion for Summary Judgment (Filed October 10, 1974)	350a
Notice by Defendant and Third Party Plaintiff to Take Deposition of Cook Industries, Inc. (Filed October 22, 1974)	353a

Contents

	Page
Answer of Plaintiff to Interrogatories of Defendant and Third Party Plaintiff (Filed October 25, 1974)	355a
Letter by Attorneys for Defendant and Third Party Plaintiff to Judge Stewart Requesting a Conference	359a
Letter by Attorneys for Third Party Defendant to Judge Stewart Re: Stipulations of Fact	361a
Answers of Plaintiff to Interrogatories of Defendant and Third Party Plaintiff (Filed May 28, 1975)	362a
Letter by Attorneys for Plaintiff Re: Stipulation of Facts	371a
Answers of Third Party Defendant Cook Industries Inc. to Amended Third Party Complaint (Filed June 24, 1975)	373a
Stipulation of Fact with Exhibits Annexed .	376a
Memo of Law by Defendant and Third Party Plaintiff with Copies of A.M.C. Decisions Attached	413a
Memo of Law on Behalf of Defendant and Third Party Plaintiff	426a
Pre Trial Memorandum by F.W. Meeker and Affidavit of Daniel X. Willis	437a
Decision of Judge Stewart	445a

DOCKET ENTRIES

(pp. 1a-3a)

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	DEMAND $	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
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Page #1

Ward, J.

PLAINTIFFS	DEFENDANTS
THE GOVERNMENT OF INDIA and THE FOOD CORPARATION OF INDIA.	COOK INDUSTRIES, INC. and COOK AND COMPANY.

wjf

CAUSE

Breach of Contr., Fraud, unjust enrichment.

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11-19-76

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The Governm. of India Vs Cook Ind. 76 Civ 2001 RJW

DATE	NR	PROCEEDINGS
5-3-76		Fld Complt & Iss Summs.
6-8-76		Fld Stip & Order that defts' time to answer the complt is ext to 7-1-76..Ward, J.
5-19-76		Fld Summs with Marshal's ret Served: Cook Ind and Cook & Co by I.S. Murray on 5-12-76 Cook & Co. by " " " " "
7-2-76		Fld Stip & Order that defts time to answer the complt is ext to 8-2-76..Ward, J.
7-9-76		Fld Pltff's Notice of Motion for an order assigning all actions to a single Magistrate and for an Protective Order...ret 7-20-76-9:30AM. rm 1904.
7-19-76		Fld memorandum of deft Louis Dreyfus Corp in opposition to pltff's motion for protective order
7-27-76		Fld. Deft. (Peavey Co.) Affdvt. in opposition to Pltffs' Motion for consolidation.
8-9-76		Fld Defts Notice of Motion for an order disqualifying Delson & Gordon as counsel for pltffs....ret 8-24-76-2:15PM Rm 1106.
8-9-76		Fld Defts memo of law in support to disqualify pltffs' attys.
7-30-76		Fld Stip & Order that the time which defts may answer is ext to 9-30-76 etc...Ward.J.
7-16-76		Fld Copy of affdvt in opposition to pltff's motion assigning a magistrate for these 5 action.
8-20-76		Fld Affdvt of Pltffs' by F. W. Meeker, in opposition to defts(Cook) motion to disqualify Delson & Gordon as counsel ofr pltffs.
8-20-76		Fld affdvt of pltff, by N. Moloshok, in opposition to defts ' motion to disqualify pltffs' counsel.
8-20-76		Fld Pltffs' memo of law in opposition to defts' motion to disqualify.
8-23-76		Fld Defts Cook Ind and Cook & Co's Reply affdvt to the pltffs answering papers in opposition of defts for an order disqualifying Delson & Gordon.
8-23-76		Fld Defts' Reply memo in further support of their motion to disqualify pltffs' att
8-25-76		Fld Pltffs' ~~xf~~ rebuttal affdvt to defts' motion to dusqualify pltffs' counsel.
9-3-76		PRE-TRIAL [illegible] HELD BY Ward J
9-14-76		Filed defts (Continental Grain, in action 76 Civ 1999) affdvt in opposition to pltffs motion for an order assigning these five actions to a single Magistrate for coordination of pre-trial proceedings. (Filed in 76 Civ 1998 CHT)
10-6-76		Filed Stip & Order ext. to 11-1-76, for defts to move or answer the complt, etc.....WARD,J.
11-4-76		Filed Stip & Order ext. to 12-1-76 for defts to answer the complt, et Ward,J.
11-19-76		Filed Memo End. on Motion Paper dated 8-9-76+- Motion granted with) Opinion filed herewith...Ward, J.
11-19-76		Filed Opinion #45377. After considering all of the foregoing factor this Court has determined to grant defts' motion. Accordingly, Delson and Gordon and Fredrick W. Meeker are disqualified. Pltffs are directed to designate substituted counsel within thirty days of the date ofthis decision..It is so Odered.Ward,J. mn

CIVIL DOCKET CONTINUATION SHEET

WARD,J.

PLAINTIFF	DEFENDANT	DOCKET NO. 76-2001
THE GOV'T OF INDIA & THE FOOD CORPORATION OF INDIA	COOK INDUSTRIES, INC. & COOK & COMPANY	PAGE 3 OF ___ PAGES

DATE	NR.	PROCEEDINGS
12-13-76		Filed pltffs notice of appeal to the USCA from order dtd 11-19-76 disqualifying the law firm of Delson & Gordon & Frederick W. Mecker, from continuing to represent the pltffs in this action. Copy sent to: Fried Frank Harris Shriver & Jacobson, 120 B'way, New York, N.Y.
12-14-76		Filed Stip & Order that in the event the pltffs do not appeal from the 11-19-76 Order, the time defts may move or answer the S&C is ext. to 2-4-77, with conditions as indicated.....WARD,J. n/m
1-[illegible]-77		Filed certified original records from the USCA on 1-3-77.
1-17-77		Filed defts affdvt & notice of motion for an order correcting the Record of Appeal by including materials submitted to this Court on 9-15-76. Ret. 1-25-77.
1-17-77		Filed defts memo in support of motion to correct the record on appeal.
1-18-77		Filed Stip & Order that pltffs motion for a protective order to assign all discovery to ta single Magistrate is adj. to 7-29-76. TENNEY,J. (4 other cases involved with other Judges)
1-21-77		Filed pltffs affdvt in opposition to defts motion to correct record on appeal.
1-21-77		Filed pltffs memo in opposition to defts motion to correct record on appeal.
1-25-77		Filed defts reply affdvt to pltffs memo & affdvt in opposition to defts application & in support of application to correct the Record on Appeal.
1-25-77		Filed defts reply memorandum re record on appeal.
1-28-77		Filed Memo-End. on motion dtd 1-17-77. Motion denied in accordance with Memorandum-Decision filed herewith.....WARD,J. n/m
1-28-77		Filed Memorandum Decision & Order. Defts move for an order supplementing the Record on Appeal with respect to this Court's Nov. 19, 1976 order disqualifying pltffs counsel. Pltffs oppose the inclusion of materials sought to be added by defts, but apply for inclusion of other materials in the Record on Appeal. For the reasons indicated defts motion & pltffs application are denied. So Ordered, WARD,J. n/m

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By G. Harbeson
Deputy Clerk

DC-111A REV. (1/75)

SUMMONS IN A CIVIL ACTION — SUMMONS AND COMPLAINT (Filed May 3, 1976) (pp. 4a-18a) — (Formerly D. C. Form No. 45 Rev. (6-62)) CIV. 1 (2-64) — 4a

United States District Court

FOR THE So. Dist. of New York

JUDGE WARD

76 CIV. 2001

CIVIL ACTION FILE NO. _____

THE GOVERNMENT OF INDIA AND THE FOOD CORPORATION OF INDIA

Plaintiff

v.

COOK INDUSTRIES INC

AND

COOK & COMPANY

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

DELSON & GORDON

plaintiff's attorney , whose address

230 PARK AVE

NY NY 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,

Clerk of Court.

M. Harrison

Deputy Clerk.

Date: May 3 1976

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

JUDGE WARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CIV 2001

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

COOK INDUSTRIES, INC. and COOK AND COMPANY

Defendants.

Civil Action No.

COMPLAINT

PLAINTIFFS DEMAND TRIAL BY JURY

Plaintiffs, by their attorneys, Delson & Gordon, for their complaint, allege:

1. Plaintiff The Government of India is a sovereign state.

2. Plaintiff The Food Corporation of India ("The Food Corporation") is an agency of the Government of India, is an India statutory corporation, and has its principal place of business in New Delhi, India. The Food Corporation is in the business of purchasing grain for importation into India.

3. Defendant Cook Industries Inc. is a Delaware corporation and has a principal place of business in

the County of New York, State of New York. Cook Industries, Inc. is in the business of grain merchandising, including the export of grain in foreign commerce.

4. Defendant Cook and Company is a corporation or other business entity believed to have done or transacted business in the City of New York, State of New York during the times at which the causes of action complained of hereinafter arose. Cook & Company is or was in the business of grain merchandizing, including the export of grains in foreign commerce.

5. Jurisdiction is founded on diversity of citizenship, the matter in controversy exceeding the sum or value of $10,000, exclusive of interest and costs.

6. The plaintiffs bring this action on behalf of themselves and all agencies of The Government of India which have purchased grain from the plaintiffs from 1964 to date, as hereinafter alleged.

AS AND FOR A FIRST CAUSE OF ACTION

7. From time to time commencing approximately in about 1964 up to the present, said plaintiffs and defendants entered into numerous purchase agreements whereby defendants

agreed to sell and plaintiffs agreed to buy grains of specified grades and quantities aggregating more than 3,500,000 tons. Each of said contracts provided in part that construction and performance would be governed by the laws of the State of New York.

8. Pursuant to each such contract, defendants delivered grain and caused the same to be loaded on vessels for shipment to India, which grain defendants represented to plaintiffs to be of the grade, kind, quality, weight, quantity and description of such grains as were specified in the respective contracts, and plaintiffs received the same and paid therefor to the defendants the amounts provided for in each contract. Payment of the purchase price under each such contract was made by irrevocable letter of credit drawn on a bank in New York, New York.

9. In many instances, the exact number of which is not certain at this time, the grains so delivered by defendants to plaintiffs or its designees, were not the same in grade, kind, quality, weight, quantity or description as called for by the pertinent contracts, but were inferior and of lesser value than the grain specified in the respective contracts in that they were short weight, of lower grade and quality, and were infested or contaminated.

10. Defendants had actual or constructive knowledge that the foregoing shipments were of lesser value than specified in the respective contracts in that they were of lesser quantity, of lower grade and were infested or contaminated at the time of shipment.

11. In some instances, such infestation or contamination was pre-existing at the time of loading and in other instances, such infestation or contamination was caused by the fact that defendants caused or permitted the cargo to be loaded onto ships that were infested or contaminated.

12. At the time of the receipt of these foodgrains, plaintiffs did not know that such grains when loaded did not correspond with the contract specifications, and plaintiffs received said foodgrains in reliance upon the implied warranty and express representation of defendants that such grains were of the quantity, quality and grade specified in the respective contracts.

13. In delivering such non-conforming grain, the defendants breached the express terms of the contract and warranties implied in law.

14. Because of the volume and nature of the shipments and the limited inspection and outmoded handling

facilities available to plaintiffs, plaintiffs could not reasonably discover the true quantity, quality and grade of the shipments as loaded and, therefore, relied upon defendants' representations as to the quantity, quality and grade of each cargo.

15. As a direct result of the foregoing, plaintiffs have sustained damages for the foregoing breaches of contract occurring within the applicable periods of limitation in the sum of at least $10,000,000.

AS AND FOR A SECOND CAUSE OF ACTION

16. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 14 of this complaint with the same effect as if repeated herein at length.

17. From in or about 1964 and continuing to date, at various ports and grain elevators within the United States, the defendants, their agents, servants and employees did wilfully, knowingly and secretly defraud the plaintiffs and convert to defendants' own use and benefit quantities of grain which defendants had sold to the plaintiffs and for which plaintiffs had paid.

18. The defendants, their agents, servants and employees wrongfully conspired among themselves and with others to defraud plaintiffs by means hereinafter set forth thereby knowingly accepting profits derived from such fraudulent practices and being unjustly enriched thereby.

19. In furtherance of said wrongful and fraudulent conspiracy, defendants, their agents, servants and employees and others:

(a) caused weighers licensed by the United States Department of Agriculture to issue false and fraudulent weight certificates with respect to the quantities of grains which were loaded for export for the account of plaintiffs;

(b) caused said licensed weighers to manipulate their scales and to issue certificates for a greater quantity of grain than that actually loaded on board vessels transporting plaintiffs' grain to India;

(c) caused its personnel and others to bypass the scales used to weigh grain prior to loading on vessels destined for India and to divert such grain to defendant's use;

(d) caused inspectors licensed by the United States Department of Agriculture to issue false and fraudulent

inspection certificates with respect to grades of grain loaded for export for the account of plaintiffs so that the grains actually shipped were of a lower grade, lesser quality and lower value than the grains specified in the respective purchase agreements;

(e) caused inspectors of grain to issue false and fraudulent certificates as to the condition of grain being loaded for shipment to plaintiffs and thereby permitted infested and contaminated grains to be shippped to plaintiffs; and

(f) caused the inspectors of vessels to issue false and fraudulent inspection reports and certificates with respect to the sanitary condition of the holds of the vessels on which grains were loaded so that the grains became invested and contaminated and unsuitable for human consumption.

20. Defendants knowingly, wilfully and intentionally delivered to the plaintiffs and to their banks false and fraudulent certificates for the purpose of wrongfully receiving payment for quantities, quality and grades of grains of greater value than the grain actually shipped.

21. Plaintiffs and their banks were not aware of the aforesaid fraud and conspiracy and paid the contract

price specified in the respective agreements for the grains therein specified and received the grain shipped in reliance upon the representations, warranties and documents received from defendants.

22. As a result of the fraudulent acts set forth above, plaintiffs have been damaged in the sum of at least $20,000,000.

AS AND FOR A THIRD CAUSE OF ACTION

23. The allegations contained in paragraphs 1 through 14 and 17 through 21 are repeated and realleged as if fully set forth herein.

24. From in or about 1964 to the present, plaintiffs paid to defendants sums of money for specific quantities, qualities and grades of grain which monies defendants accepted under the false pretenses that the quantities, quality and grade contracted and paid for had in fact been delivered to plaintiffs.

25. In actual fact, defendants delivered to plaintiffs substandard grades and quality of grain and insufficient quantities of grain.

26. By reason of defendants' wrongful and fraudulent conduct as aforesaid, defendants have been unjustly enriched in the amount of at least $20,000,000, no part of which has been repaid though duly demanded.

AS AND FOR A FOURTH CAUSE OF ACTION

27. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 14, and 17 through 21, as if fully set forth herein.

28. From in or about 1964 to the present as a result of fraudulent weight certificates issued or caused to be issued by the defendants or their agents, plaintiffs were required to pay freight to various owners or disponent owners of vessels in which the grain was carried according to the tenor of the aforementioned fraudulent weight certificates.

29. As a result of the above, plaintiffs overpaid to vessel owners as yet undetermined sums of money, but believed to be in excess of $5,500.000.

WHEREFORE, plaintiffs demand judgment against defendants for the sum of $25,500,000 or such greater sum as

may be shown, all as compensatory damages, and $10,000,000 as exemplary damages, plus interest, costs and disbursements.

Dated: New York, New York
April 30, 1976

DELSON & GORDON
Attorneys for Plaintiffs

By_____
Norman Moloshok
A Member of the Firm
Office & P.O. Adress
230 Park Avenue
New York, New York 10017
(212) 686-8030

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

15a

PLAINTIFF S: The Government of India and The Food Corp. of India	COURT NUMBER: 76 C IV 2001
DEFENDANT S: Cook Industries Inc. and Cook & Co.	TYPE OF WRIT(S): Complaint

SERVE ➡ **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
Cook Industries Inc. ~~and Cook & Co.~~

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
40 Rector Street, New York, New York 10006 (2)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Delson & Gordon
230 Park Avenue
New York, New York 10017

Number of writs to be served with this form-285	1
Number parties to be served in this case	2
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: ☒ PLAINTIFF ☐ DEFENDANT | TELEPHONE NUMBER: 686-8030 | DATE: 4-30-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	1	SY	SY		5/1/76

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)	☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service: Time: 2:20 ☒ pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

All Processes Accepted for 5/14/76
Initial Deposit: .....
Cost of Service: .....
Refund Due: .....

#636

Make remittance payable to Clerk, SDNY, U.S. Courthouse, Foley Sq., New York, NY, 10007

3. NOTICE OF SERVICE

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

16a

PLAINTIFF	COURT NUMBER
DEFENDANT	TYPE OF WRIT(S)

SERVE ➡ **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

(1)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Number of writs to be served with this form-285	1
Number parties to be served in this case	2
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: ☐ PLAINTIFF ☐ DEFENDANT	TELEPHONE NUMBER	DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	1	54	54		5/11/76

I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)	☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.	
Address (complete only if different than shown above)	Date of Service	Time am pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total
				3.36

REMARKS:

2 NOTICE OF SERVICE

17a

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last *(No. 5)* copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF	COURT NUMBER
DEFENDANT	**TYPE OF WRIT(S)**

SERVE ➡ **AT**

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS *(Street or RFD, Apartment No., City, State and ZIP Code)*

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:	Number of writs to be served with this form-285	
	Number parties to be served in this case	
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of:	TELEPHONE NUMBER	DATE
☒ PLAINTIFF ☐ DEFENDANT		

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)	☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.	
Address (complete only if different than shown above)	Date of Service	Time am pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

USM-285(Ed. 11-1-74)

5. RECEIPT

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

18a

PLAINTIFF

COURT NUMBER

DEFENDANT

TYPE OF WRIT(S)

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

AT

ADDRESS (*Street or RFD, Apartment No., City, State and ZIP Code*)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Number of writs to be served with this form-285	
Number parties to be served in this case	
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE.

Signature of Attorney or other Originator requesting service on behalf of: ☐ PLAINTIFF ☐ DEFENDANT | TELEPHONE NUMBER | DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode

Address (complete only if different than shown above)

Date of Service | Time: am / pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total

REMARKS:

USM-285(Ed. 11-1-74)

5. RECEIPT

NOTICE OF MOTION TO DISQUALIFY DELSON & GORDON AND AFFIDAVIT OF VICTOR S. FRIEDMAN WITH EXHIBITS ANNEXED
(pp. 19a-56a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

- against -

COOK INDUSTRIES INC. and COOK AND COMPANY,

Defendants.

76 Civ. 2001 (RJW)

NOTICE OF MOTION

- X

S I R S :

PLEASE TAKE NOTICE, that, upon the attached affidavit of Victor S. Friedman and the exhibits attached thereto, the Memorandum of Defendants in Support of this Motion, the Complaint, and all of the papers and proceedings heretofore had herein, defendants Cook Industries Inc. and Cook & Company will move this Court before the Honorable Robert J. Ward, at 2:15 P. M. on August 24, 1976, in Room 1106, at the United States Court House, Foley Square, New York, New York, or as soon thereafter as counsel may be heard, for an order disqualifying Delson & Gordon as counsel for the plaintiffs and barring Delson & Gordon from acting as counsel or assisting other counsel

in this action or any similar actions against the defendants and granting such other and further relief as the court deems just and proper.

Dated: New York, New York
August 5, 1976

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON

By /s/ Victor S. Friedman
A Member of the Firm
Attorneys for Defendants
Cook Industries Inc. and
Cook & Company
120 Broadway
New York, New York 10005
Tel. (212) 964-6500

TO:

DELSON & GORDON
Attorneys for Plaintiffs
230 Park Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

- against -

COOK INDUSTRIES, INC. and COOK AND COMPANY,

Defendants.

AFFIDAVIT

76 Civ. 2001

(R.J.W.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

VICTOR S. FRIEDMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants Cook Industries, Inc. and Cook & Company in the above action. I submit this affidavit in support of defendants' motion for an order disqualifying the law firm of Delson & Gordon as counsel for plaintiffs in this action, barring them from acting as counsel or assisting other counsel in this action or any similar actions against defendants and such other and further relief as the court deems just and proper.

2. This motion is prompted by the activities of Frederick W. Meeker, an attorney presently associated with Delson & Gordon who is actively involved in the prosecution of plaintiffs'

action against the defendants.

3. Immediately prior to Mr. Meeker's association with Delson & Gordon in April 1976, Mr. Meeker was associated with Hill, Rivkins, Carey, Loesberg and O'Brien of New York, New York (the "Hill, Rivkins firm") and was, in effect, the attorney in charge of defending Cook Industries in two litigations initiated in the Southern District involving issues substantially related to those in the instant action. The complaints in these actions, Shui Fa Oil Mill Co., Ltd. et al., plaintiffs, v. M/S "Norma" and Austin Navigation Corp., Ltd., defendant and third party plaintiff, v. Cook Industries, Inc., third party defendant (S.D.N.Y. 73 Civ. 250 (CES)), and Shui Fa Oil Mill Co., Ltd., et al. v. Cook Industries, Inc., (S.D.N.Y. 73 Civ. 251 (CES)), (hereinafter collectively referred to as the "Soybean Actions") are annexed hereto as Exhibits 1 and 2, respectively.

4. The Soybean Actions were commenced in or about January 1973 and by a decision by Judge Charles E. Stewart were finally resolved in favor of Cook Industries in or about March 1976, approximately one month before Mr. Meeker left the Hill, Rivkins firm to become associated with Delson & Gordon. A copy of the opinion of Judge Stewart, dated February 20, 1976, is annexed hereto as Exhibit 3.

5. The plaintiffs in the Soybean Actions had alleged, inter alia, that soybeans shipped to them in January 1972 from Reserve, Louisiana under a contract with Cook Industries, Inc. were not of the "proper amount or quality". Exhibit 2, ¶¶3 and 5. They claimed that the soybeans were delivered to them "in a short, slack and damaged condition", and that when the soybeans were weighed in Taiwan the amounts did not agree with those set forth on the weight certificates issued at Reserve, Louisiana. Exhibit 2 at ¶3 and Exhibit 3 at page 3.

6. In the instant action, plaintiffs claim that grain delivered to them at various ports from 1964 through the date of the Complaint, pursuant to contracts with defendants, "were short weight, of lower grade and quality and were infested or contaminated." (Plaintiffs' Complaint ¶9) Central to plaintiffs' claim is the allegation that the amounts of grain actually delivered to them at the various ports differed from the weights set forth on the weight certificates issued at these ports. (Plaintiffs' Complaint ¶19) Plaintiffs, through Mr. Meeker, have advised defendants that Reserve, Louisiana is among the ports allegedly involved.

7. It is beyond dispute that practically from the day that the Soybean Actions came into the Hill, Rivkins office, Mr. Meeker acted as the attorney in that firm defending Cook

Industries. During the more than three years that the Soybean Actions were being actively litigated, Mr. Meeker conducted factual and legal inquiries, prepared and submitted papers to the court and appeared for the Hill, Rivkins firm on behalf of Cook Industries in court and at meetings with other counsel. In that regard, Mr. Meeker reviewed the documentation associated with the loading at Reserve; participated in the development of the facts necessary to prepare and present a stipulation of facts to the court; conducted inquiries as to the loading procedures at Reserve as well as the names of Cook personnel at Reserve; conducted and responded to discovery; interviewed the chief weighmaster, Daniel X. Willis, of the entity licensed by the United States Department of Agriculture to issue weight certificates at Reserve; obtained the testimony of an expert regarding shortages; and in all other respects acted as the attorney defending Cook Industries against a claim that it had not delivered the agreed upon amount and quality of soybeans to the plaintiffs.

8. A succinct description of the issue involved in the Soybean Actions and Mr. Meeker's role in those actions is found in the memorandum decision of Judge Stewart dated October 9, 1974 (annexed hereto as Exhibit 4) in which Judge Stewart denied an earlier motion for summary judgment. After stating that "[H]ere, Cook moves for summary judgment on the basis of affidavits by its attorney Frederick W. Meeker, one Daniel X. Willis, and supporting documents . . . ." (p.2, emphasis

added), the court went on to state that "the primary issue in this case appears to be the weight of the soybeans when they were loaded on the M/S Norma" at Reserve, Louisiana. The primary issue as stated by the Court in the Soybean Actions is identical to that presented here.

9. Although discovery would of course be necessary to determine the full extent to which Mr. Meeker has been involved in Delson & Gordon's representation of the plaintiffs, there are sufficient facts presently available from which to conclude that his involvement has been considerable. On or about May 3, 1976, approximately one month after leaving the Hill, Rivkins firm, Mr. Meeker contacted Cook Industries as an attorney representing these plaintiffs in an action to be instituted against Cook. Shortly following this communication, the instant action was commenced. Since then, Mr. Meeker, on behalf of the plaintiffs, has written to Cook (Exhibit 5), written to the elevator in Reserve, Louisiana involved in the Soybean Actions (Exhibit 6) and written to the court (Exhibit 7). In each instance, he wrote for the firm of Delson & Gordon, as attorneys for the plaintiffs.

10. I first learned of the nature of the Soybean Actions and of Mr. Meeker's involvement with them on July 19, 1976. After a brief but intensive investigation, on July 21, 1976 I advised Delson & Gordon by letter (Exhibit 8) of the

facts as I knew them and requested that they advise me on or before July 26, 1976, whether or not they would voluntarily withdraw as counsel for plaintiffs.

11. On July 27, 1976, I met with Norman Moloshok and Alvin H. Meadow, members of the firm of Delson & Gordon, at their request. During that meeting, I advised them of the information which we had obtained regarding Mr. Meeker's activities while with the Hill, Rivkins firm and with their firm. Mr. Moloshok and Mr. Meadow expressed surprise at the extent of Mr. Meeker's activities and requested that we refrain from moving to disqualify their firm until they had the opportunity to discuss this matter further with Mr. Meeker.

12. In order to avoid the possibility of prejudice to the defendants by further participation in any proceedings involving Delson & Gordon, the parties' counsel agreed to a stipulation which, in effect, suspends any further proceedings until the issue of disqualification is resolved.

13. On July 28, 1976, Mr. Meadow advised me by telephone that he had spoken with Mr. Meeker, but from that conversation he was unable to conclude that his firm must withdraw.

WHEREFORE, I respectfully request that an order be entered disqualifying Delson & Gordon as counsel for the plaintiffs, barring Delson & Gordon from acting as counsel

or assisting other counsel in this action or any similar actions against the defendants and granting such other and further relief as the court deems just and proper.

/s/ Victor S. Friedman
VICTOR S. FRIEDMAN

Sworn to before me this
5 day of August, 1976

/s/ Patricia A. Singleman
Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD., Plaintiffs, -against- MS "NORMA", her engines, boilers, etc., -and against- AUSTIN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES, INC., Third-Party Defendant.	THIRD-PARTY COMPLAINT 73 CIV. 250 (CES)

Defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Third-Party Complaint against the third-party defendant herein, respectfully shows to this Court and alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction and is an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, third-party plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of Liberia, and was

the owner of the MS "NORMA".

3. At all times hereinafter mentioned, third-party defendant was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 50 Broadway, New York, N. Y.

4. That prior to the times mentioned in the Complaint, the MS "NORMA" was chartered to the third-party defendant, and at all times hereinafter mentioned and at the times mentioned in the Complaint, the said charter party dated at New York, December 16, 1971, was in full force and effect.

5. That under the provisions of said charter, the charterer was responsible to load, stow and discharge the cargo from the vessel.

6. That at all times mentioned in the Complaint, the whole reach of the vessel's holds, decks and usual places of loading were placed at the third-party defendant's disposal and under its control, and the loading, and discharging of the cargo referred to in the Complaint was under the control of the third-party defendant.

7. That on or about January 16, 1973 the plaintiffs herein filed a Complaint in this Court against the above-named defendant and third-party plaintiff. The Complaint alleges that certain shipments of yellow soybeans shipped on board the MS "NORMA" in January, 1972 at Louisiana were subsequently delivered at Kaohsiung, Taiwan. A copy of the Complaint is annexed hereto, marked Exhibit A.

8. Defendant and third-party plaintiff has performed all of the terms and conditions of the aforesaid charter party on its part to be performed.

AS AND FOR A SECOND CAUSE OF ACTION

9. Repeats and realleges each and every preceding Paragraph of this Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

10. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the breach of the provisions of the Charter Party on the part of the third-party defendant, its agents or servants.

11. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees.

AS AND FOR A THIRD CAUSE OF ACTION

12. Repeats and realleges each and every preceding Paragraph of this Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

13. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the fault and neglect of, and was attributable to, the third-party defendant, its agents or servants. and not to the defendant and third-party plaintiff.

14. That by reason of the aforesaid, if there should be any liability imposed upon defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third party plaintiff for the amount of any such

liability, together with the costs and disbursements of this action, including attorneys' fees, and if said defendant and third-party plaintiff is held responsible for the damages sustained by the plaintiffs herein, such liability will have been brought about and was caused wholly as a result of the primary and active negligence or fault of the third-party defendant, its agents or employees, without any fault on the part of defendant and third-party plaintiff contributing thereto.

WHEREFORE, defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., demands judgment against third-party defendant COOK INDUSTRIES, INC. for any sum that may be recovered against it, together with the costs and disbursements of this action, including attorneys' fees, and for such other further or different relief as to the Court may be just and proper.

Dated: New York, N. Y.
July 18, 1973.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Defendant and
Third-Party Plaintiff

BY: S/Peter J. Zambito
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

M/S "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant.

- -X

1. This is a case of admiralty and maritime jurisdiction and is an admiralty claim within the meaning of Rule 9 (h). Plaintiff invokes the maritime procedures specified in Rule 9 (h).

2. Plaintiffs are duly organized foreign corporations with places of business in Taiwan.

Defendant, AUSTIN NAVIGATION CORP. LTD., is a duly organized corporation with an office and place of business at 25 Broadway, New York, N. Y.

3. During all the times mentioned herein the defendant, AUSTIN NAVIGATION CORP. LTD., was the owner and/or charterer and/or operator of the M/S "NORMA".

4. Upon information and belief the M/S "NORMA" is now, or during the pendency of this action will be, within this District.

5. On or about January 5, 1972 there were delivered to defendants at Reserve, Louisiana, certain shipments of yellow soybeans as described in a schedule annexed hereto and marked Schedule "A", in good order and condition for delivery to plaintiffs at Kaohsiung, Taiwan, in consideration of an agreed freight and pursuant to the valid terms of bills of lading issued on behalf of said defendants and the M/S "NORMA".

6. Upon information and belief the aforesaid goods were loaded aboard the M/S "NORMA" and upon arrival at destination were delivered in a damaged, short and slack condition.

7. Plaintiffs are unable to determine whether defendants or other defendants to be named in a companion civil action are responsible for the damage and shortage of said cargo.

8. Plaintiffs prior to the arrival of the vessel at destination were the owners of the goods and bills of lading for value and bring this action on behalf of themselves and all others interested in said shipments as their interest may ultimately appear.

9. All conditions precedent required of plaintiffs and of all others interested in said shipments have been performed.

10. By reason of the premises, plaintiffs, and/or benefit parties, have sustained damage in the sum of $36,000.00 as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

WHEREFORE, plaintiffs pray:

1. That the M/S "NORMA" be arrested;

2. That process issue against said defendants and that defendant, AUSTIN NAVIGATION CORP. LTD., be cited to appear and answer the allegations of the complaint;

3. That an interlocutory judgment be entered in favor of plaintiffs against the M/S "NORMA" and against the defendant, AUSTIN NAVIGATION CORP. LTD., directing that the plaintiffs recover their damages and that the M/S "NORMA" be condemned and sold and the proceeds of sale applied to the payment to plaintiffs of the sums found due them;

4. That the amount due plaintiffs be computed by further proceedings before a Commissioner pursuant to Rule 53 (b) and/or by further proceedings before the Court pursuant to Rule 42 (b);

5. That final judgment against defendants and the M/S "NORMA" be entered in favor of plaintiffs for the amount found due plaintiffs with interest and with costs;

6. That plaintiffs have such other and further relief as may be just.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm

Office & P. O. Address
99 John Street
New York, N. Y. 10038
REctor 2-4646

SCHEDULE "A"

B/L					
7	1,000	M/T	No. 2 yellow soybeans		
8	947.750	"	" " "		Shui Fa Oil Mill Co. Ltd.
4	400	"	" " "		
5	440	"	" " "		Huey Feng Oil Mill Co. Ltd.
11	707.250	"	" " "		
6	600	"	" " "		Hui Shung Solvent Oil Co.
12	225	"	" " "		
13	300	"	" " "		Hsie Cheng Oil Mill Corp.
15	1,675	"	" " "		
14	2,000	"	" " "		Heng Lung Oil Mill Co. Ltd.
16	1,300	"	" " "		
17	1,325	"	" " "		Yuan Yi Oil Industry Co. Ltd.
9	1,215	"	" " "		
10	1,200	"	" " "		King Tai IH Oil Factory Co. Ltd.
1	565	"	" " "		
2	400	"	" " "		King Tai Yi Trading Co. Ltd.
3	400	"	" " "		" " " " " "

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL A. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing complaint; and that the same is true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

Daniel A. Sullivan

Sworn to before me this
15 day of January, 1973.

SYLVIA MILLER
Notary Public, STATE OF NEW YORK
No. 41-2710311
Qualified in New York County
Commission Expires March 30, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES INC.,

Defendant.

COMPLAINT

- -X

Plaintiffs, by their attorneys, BIGHAM ENGLAR JONES & HOUSTON, complaining of defendant, allege:

1. Plaintiffs are duly organized corporations with offices and places of business in Taiwan.

2. Defendant is a duly organized Corporation with an office and place of business at 50 Broadway, New York, N. Y.

3. In January 1972 defendant contracted to sell various lots of No. 2 yellow soybeans to be shipped from Reserve, Louisiana, on the M/S "NORMA" on or about January 5, 1972 for delivery at Kaohsiung, Taiwan. A schedule of the shipments is attached hereto and marked Schedule "A".

4. On or about March 2, 1972 the M/S "NORMA" arrived at the port of "Kaohsiung" where the aforementioned shipments were delivered to plaintiffs in a short, slack and damaged condition.

5. Plaintiffs are unable to determine whether the defendant, or other defendants, to be named in a companion admiralty suit, are responsible for the failure to deliver the proper amount and quality of cargo contracted to be delivered.

6. Plaintiffs, prior to arrival of the cargo at destination, were the owners of the goods for value, and they bring this action on behalf of themselves and all others interested in said shipments as their interests may ultimately appear.

7. All conditions precedent required of plaintiffs and of all others interested in said shipment have been performed.

8. By reason of the premises, plaintiffs, and/or benefit parties, have sustained damage in the amount of $36,000.00, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $36,000.00 plus interest and costs and for such other and further relief as may be just.

B/L 7 8 4 5 11 6 12 13 15 14 16 17 9 10 1 2 3

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By Daniel A. Sullivan
Daniel A. Sullivan
A Member of the Firm
Office & P. O. Address
99 John Street
New York, N. Y. 10038
REctor 2-4646

SCHEDULE "A"

B/L					
7	1,000	M/T	No. 2 yellow soybeans		Shui Fa Oil Mill Co. Ltd.
8	947.750	"	"	"	" " " " " "
4	400	"	"	"	Huey Feng Oil Mill Co. Ltd.
5	440	"	"	"	" " " " " "
11	707.250	"	"	"	Hui Shung Solvent Oil Co.
6	600	"	"	"	" " " " "
12	225	"	"	"	Hsie Cheng Oil Mill Corp.
13	300	"	"	"	" " " " "
15	1,675	"	"	"	Heng Lung Oil Mill Co. Ltd.
14	2,000	"	"	"	" " " " " "
16	1,300	"	"	"	Yuan Yi Oil Industry Co. Ltd.
17	1,325	"	"	"	" " " " " "
9	1,215	"	"	"	King Tai IH Oil Factory Co. Ltd.
10	1,200	"	"	"	" " " " " " "
1	565	"	"	"	King Tai Yi Trading Co. Ltd.
2	400	"	"	"	" " " " " "
3	400	"	"	"	" " " " " "

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL A. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing complaint; and that the same is true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

Daniel A. Sullivan

Sworn to before me this
15th day of January, 1973.

[illegible] MILLER
[illegible] NEW YORK
[illegible]
Qualified in New York County
Commission Expires March 30, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES INC.,

Defendant.

COMPLAINT

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs
99 JOHN STREET NEW YORK, N. Y. 10038
212-732-4646

4ia

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

M/S "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant.

73 Civ. 250

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

73 Civ. 251

MEMORANDUM

STEWART, DISTRICT JUDGE:

Plaintiffs, Shui Fa Oil Mill Co. Ltd., Huey Feng Oil Mill Co. Ltd., Hui Shung Solvent Oil Co., Hsie Cheng Oil Mill Corp., Heng Lung Oil Mill Co. Ltd., Yuan Yi Oil Industry Co. Ltd., King Tai Ih Oil Factory Co. Ltd. and King Tai Yi Trading Co. Ltd. ("Shui Fa") have brought suit against the M/S

"Norma" and its owner, Austin Navigation Corp. Ltd. ("Austin"), alleging that defendant Austin is liable to plaintiffs for breach of its contract for carriage. Shui Fa alleges that it had contracted with Austin for delivery of soybeans and that the shipment was 254 metric tons short.[1/] Shui Fa has brought a separate action for breach of contract against Cook Industries, Inc. ("Cook"), who sold the soybeans and arranged the charter for the shipment, claiming that Cook failed to load the proper quantity of goods. Finally, Austin has brought a third party complaint against Cook, alleging that, if Austin is liable to Shui Fa, then Cook must indemnify Austin. The two actions, consolidated for all purposes by court order on December 7, 1973, have been submitted to the court on a stipulated record. . .

In November of 1971, Cook contracted with the China Trade and Development Corporation, acting on behalf of the plaintiffs, to sell and to arrange to ship yellow soybeans. Plaintiffs bought 14,000 metric tons of soybeans, with a "leeway factor" of 5%; thus, Cook was authorized to ship from 13,300 to 14,700 metric tons of soybeans. Exhibit 1-A, Stipulation of Facts.[2/] On December 16, 1971, Cook entered into a space charter

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1/ The value of the loss is claimed to be $32,452.46. Stipulation of Facts, ¶20.

2/ All exhibits, unless otherwise indicated, are attached to the Stipulation of Facts.

with Austin to have Austin transport the cargo aboard the M/S Norma. Exhibit 3. A bill of lading, certifying receipt of 14,700 metric tons of soybeans was issued by Austin's agent. Exhibit 4 and 5. Weight Certificates totalling 14,700.68 metric tons were issued by the Destrehan Board of Trade at Reserve, Louisiana.[3/] Exhibits 6-A through 6-H. The Norma sailed from Reserve, Louisiana and went directly to Kaohsiung, Taiwan, where it discharged the cargo. A surveyor, employed by plaintiffs, watched the discharge and supervised the sweeping of the holds. Stipulation of Facts, ¶14-16. The cargo was weighed immediately and found to be short the 254 metric tons which are at issue here.

The issue before us is which of these parties bears the risk of loss for the shortage of soybeans. The United States Carriage of Goods by Sea Act, 46 U.S.C. §1300 et seq. ("COGSA") governs the liabilities of the parties.[4/] Under COGSA, "...a shipper makes out a prima facie case by proving that

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3/ The accuracy of the Destrehan port scales and of the weight certificates is attested to by Daniel Willis, Chief Weighmaster of the Destrehan Board of Trades, who personally supervised the weighing of the soybeans. Exhibit 7. His affidavit provides sufficient foundation to find that the certificates fall within the "business records" exception to the hearsay rule and are admissible as evidence. Compare J. Howard Smith, Inc. v. S.S. Maranon, 501 F.2d 1275 (2d Cir. 1974), cert. denied 420 U.S. 975 (1975).

4/ COGSA applies to the "carriage of goods by sea to or from ports of the United States in foreign trade." 46 U.S.C. §1300. In addition, the bill of lading states that it is effective "subject to the provisions of the Carriage of Goods by Sea Act...which shall be deemed to be incorporated herein...." Exhibit 5, ¶1.

his goods were delivered to the carrier in good condition and were outturned damaged or not at all; the burden then falls upon the carrier to bring itself within an excepted cause to prove it exercised due diligence to avoid and prevent the harm...." Lekas & Drivas, Inc. v. Goulandris, 306 F.2d 426, 429 (2d Cir. 1962) (citations omitted). See also Yawata Iron & Steel Co., Ltd. v. Anthony Shipping Co., Ltd., 396 F. Supp. 619, 621 (S.D.N.Y. 1975). Here, defendant Cook, who arranged for the shipment of the goods, has shown by the bill of lading issued by Austin and by the weight certificates that it [Cook] delivered the full contract amount of soybeans to the carrier. Kupfermann v. United States, 227 F.2d 348, 350 (2d Cir. 1955).[5/] Plaintiffs have offered nothing to dispute the validity of these documents. Thus, plaintiffs' charge that Cook breached its contract for failure to deliver the full amount must fail and plaintiffs' complaint against Cook is dismissed.

As it has been established that the shipper made proper delivery, the burden of proof shifts to the carrier to

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5/ The contract between plaintiffs and Cook also specified "C & F Buyer", [Exhibit 1-A], which indicates that the risk of loss in transit shifted to the buyer when the goods were received by the carrier. See Gilmore and Black, The Law of Admiralty, 2d ed. 1975 §3-7. See also Uniform Commercial Code ("UCC") §2-320.

establish that it is not liable for the loss because the loss is attributable to a cause which is listed under 46 U.S.C. §1304(2). See Yawata Iron & Steel Co., supra, California & Hawaiian Shipping Co. v. Columbia S.S. Co., Inc., 391 F. Supp. 894 (E.D. La. 1972), aff'd 510 F.2d 542 (5th Cir. 1975), and Gilmore & Black, The Law of Admiralty, 2d ed. 1975 §3-43. Austin alleges that the shortage of soybeans is due to "natural shrinkage," an event which falls within a carrier's statutory exculpation from liability under COGSA, 46 U.S.C. §1304(2)(m).[6/] In support of this contention, Austin offers the opinion letter of Jack Berg, Vice President of Continental Grain Company. Berg states that, given the method of shipment and of discharge and the nature of the commodity shipped, "normal shrinkage...should be 1.55%, equivalent to 227.85 metric tons." Exhibit 10. Further, plaintiffs' answers to interrogatories indicate that, for the three year period prior to the voyage in suit, plaintiffs suffered losses in soybean shipments which ranged from .225% to 2.62816%. Exhibit 9. Given that the loss at issue here is 1.729456%,[7/] only "slightly in excess" of the percentage stated by Berg to be normative (Memorandum of Law, p. 5) and that the

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6/ 46 U.S.C. §1304(2)(m) states "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from...wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods."

7/ See plaintiffs' surveyor report, Exhibit 9.

loss of weight is not an unusual occurrence in the shipment of soybeans, Austin argues that the loss is due to an inherent quality of the beans and Austin should not be held responsible.

Plaintiffs have not submitted any evidence to rebut Austin's allegations that the loss was due to natural shrinkage. Further, plaintiffs have not alleged that Austin was negligent in its transport or failed to discharge all cargo on board. We find Austin's evidence that the loss was attributable to natural qualities of the goods to be credible and we find that Austin has met its burden of showing that it is not liable for the damage. 46 U.S.C. §1304(2)(m). Plaintiffs, failing to offer any evidence on Austin's activities, have not met their burden of showing that any of Austin's actions were a concurrent cause of the loss [See Yawata Iron & Steel Co., supra, and Lekas & Drivas, supra]. Therefore, we find Austin is not liable to plaintiffs for the shortage. Plaintiffs' complaint against Austin is dismissed; Austin's third-party complaint against Cook is also dismissed.

SO ORDERED.

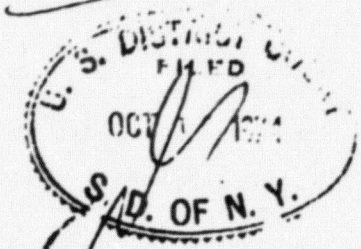
Charles E. Stewart, Jr.
United States District Judge

Dated: New York, N. Y.
February 20, 1976.

86024/FWR P.L

File

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and
Third-Party Plaintiff,

-against-

COOK INDUSTRIES, INC.,

Third-Party Defendant.

73 Civ. 250

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

This is a breach of contract action brought by various Taiwanese corporations against the M/S Norma, her owner, the Austin Navigation Corp. Ltd., and Cook Industries, Inc., an exporting firm, alleging a shortage of some 254 metric tons of soybeans in a 1972 shipment of soybeans from Louisiana to Taiwan. Austin Navigation has filed a third-party complaint against Cook. Cook has moved to dismiss the action by plaintiffs and the third-party complaint by Austin Navigation on the grounds that no substantial questions of law or fact are in issue. Though Cook does

not state that this is a summary judgment motion, we will assume that it is.[1/]

Both plaintiffs and Austin Navigation contend that summary judgment is not warranted in the instant case because of (1) disputed questions of fact, including specifically the weight of the soybeans loaded onto the M/S Norma in Louisiana; and (2) Cook's failure to comply with Federal Rule 56(e), requiring affidavits in summary judgment motions to be based on "personal knowledge."

Since we agree that defendant and third-party plaintiff Cook has failed to comply with the requirements of Rule 56(e), we deny its motion for summary judgment. Consequently, we need not consider whether there are "any genuine issue(s) as to any material fact [or] that the moving party is entitled to judgment as a matter of law," as is required by Rule 56(c).

As indicated, Rule 56(e) requires that "(s)upporting ... affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

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1/ Moreover, we note that movant Cook has failed to comply with Rule 9(g) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York, requiring that the moving party annex to the notice of motion for summary judgment a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried..."

affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith..." Here, Cook moves for summary judgment on the basis of affidavits by its attorney Frederick W. Meeker, one Daniel X. Willis, and supporting documents. Clearly this is insufficient. The Second Circuit has held that two attorneys' affidavits "were not based on 'personal knowledge', and therefore do not suffice under F.R.C.P. 56(e)." Subin v. Goldsmith, 224 F.2d 753, 756 (2d Cir. 1955). Accord, Antonio v. Barnes, 464 F.2d 584 (9th Cir. 1972). Since the primary issue in this case appears to be the weight of the soybeans when they were loaded onto the M/S Norma, the affidavits of Messrs. Meeker and Willis are not sufficient, since they were undoubtedly not present when the soybeans were weighed and loaded.

Cook's motion for summary judgment is denied for the reasons stated.

SO ORDERED.

United States District Judge

Dated: New York, N. Y.
October 9, 1974.

51a

MAY 1 1976

LAW OFFICES
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230 PARK AVENUE
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CABLE "CELEGOR"
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JAKARTA, INDONESIA OFFICE
DJEMAT & ASSOCIATES
JALAN IMAM BONJOL 76-78
JAKARTA, INDONESIA

WASHINGTON, D.C. OFFICE
1900 L STREET, N.W.
WASHINGTON, D.C. 20036
(202) 833-9840

May 4, 1976

John Reams, Esq.
Messrs. Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Re: India v. Cook --
Our File 06773-012

Dear John:

Pursuant to today's conversation, please find the vessel listings enclosed for the years 1964 through 1975.

The list does not distinguish between wheat and grain sorghum. The quantities are in metric tons and are more or less five or ten per cent of the amounts shown.

We will eventually be formally requesting that the landing records for each ship be produced, as well as the grade and weight certificates and bills of lading, and where applicable, the charter parties.

We also take the liberty of enclosing a copy of our complaint.

Very truly yours,

DELSON & GORDON

F. W. Meeker

FWM:atg
Enclosures

Law Offices
DELSON & GORDON
230 Park Avenue
New York, N.Y. 10017

June 7, 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[illegible] Elevator Co.
[illegible]

Re: Records of Accounts

Dear Sir:

We represent the Government of India in certain actions pending in the United States District Court for the Southern District of New York against various grain companies and other litigations contemplated.

Accordingly, we would put you on notice that the books of accounts required to be kept by you pursuant to Title 7 CFR §162.37 for six years after December 31 of the year in which created will be required to be produced by you for that litigation. We would also request that any records of accounts you now hold for periods beyond the six years be retained.

Please be advised that until further written notice by this firm, you are requested to retain such records.

We also request that we be permitted on an informal basis to inspect and copy such records at our convenience upon your convenient date.

Please advise this office of a convenient date to copy and inspect such records.

Very truly yours,

DELSON & GORDON

By: [signature]

(Encl.)
cc: Administrator
Agricultural Stabilization and Conservation Service
U.S. Department of Agriculture
Washington, D.C.

53a

MAY 13 1976

LAW OFFICES
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May 7, 1976

The Honorable Charles H. Tenney
The Honorable Constance B. Motley
The Honorable Richard Owen
The Honorable Robert J. Ward
The Honorable Dudley B. Bonsal
United States District Judges
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Your Honors:

We acknowledge receipt of Messrs. Paul Weiss' letter of May 5 to your Honors and would advise that we are in basic agreement with the suggestion that the causes be assigned to a single judge. If this is not possible under the local rules, we would respectfully request that all cases be assigned to a single magistrate for all pre-trial proceedings.

By copy of this letter, we are advising all parties to the respective actions.

Very Respectfully,

DELSON & GORDON

Frederick W. Meeker

FWM:MBD

cc: Paul Weiss, Rifkind, Wharton
& Garrison Esqs.
Cargill Inc.
Cook Industries, Inc.
Cook & Co.
Peavy Co.
Louis Dreyfus Corporation

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

(STRASSER, SPIEGELBERG, FRIED & FRANK)

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ARTHUR L. STRASSER (1905-1967)

MILTON P. ACKMAN
FRANKLIN L. BASS
KENNETH R. BLACKMAN
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STEPHEN E. ESTROFF
ARTHUR A. FEDER
JOHN F. FINN, JR.
ARTHUR FLEISCHER, JR.
STEPHEN FRAIDIN
HANS J. FRANK
WALTER J. FRIED
VICTOR S. FRIEDMAN
HERBERT L. GALANT
MATTHEW GLUCK
ROBERT S. GREENBAUM
SAM HARRIS
EDWIN HELLER
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ALLEN I. ISAACSON
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SHELDON RAAB
MICHAEL H. RAUCH
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PATRICIA R. HARRIS
MAX N. KAMPELMAN
KENNETH S. KRAMER
ARTHUR LAZARUS, JR.
RICHARD SCHIFTER
DANIEL M. SINGER

HAROLD P. GREEN
FREDERICK SASS
COUNSEL

July 21, 1976

OUR REFERENCE

1075-102

BY HAND

Norman Moloshok, Esq.
Alvin H. Meadows, Esq.
Delson & Gordon
230 Park Avenue
New York, New York 10017

RE: Government of India and The Food Corporation of India v. Cook Industries, Inc. and Cook & Company, S.D.N.Y. 76 Civ. 2001 (R.J.W.)

Gentlemen:

In connection with our firm's representation of Cook Industries, Inc. ("Cook Industries") and Cook & Company in the above-captioned action, information has come to our attention which we believe requires your firm to withdraw as counsel for the plaintiffs in that action.

As you know, Frederick W. Meeker, Esq., has been actively participating as an associate of your firm in the prosecution of your client's action against Cook Industries. We understand that immediately prior to his association with your firm in April, 1976, Mr. Meeker had been actively involved in representing Cook Industries in its defense to litigations involving issues substantially related to those involved in the instant action.

While associated with Hill, Rivkins, Carey, Loesberg & O'Brien of New York City, Mr. Meeker was, in effect, acting as the attorney in charge of defending Cook Industries in Shui Fa Oil Mill Co., Ltd. et al., plaintiffs, v. M/S "Norma" and Austin Navigation Corp., Ltd., defendants and third party plaintiffs, v. Cook Industries, Inc., third party defendant (S.D.N.Y. 73 Civ. 250 (CES)); and Shui Fa Oil Mill Co., Ltd. v. Cook Industries, Inc., (S.D.N.Y. 73 Civ. 251 (CES)). These actions were commenced in or about January, 1973, and by a decision of Judge Charles E. Stewart were finally resolved in favor of Cook Industries in or about March, 1976, approximately one month before Mr. Meeker left the Hill, Rivkins firm to become associated with your firm. The plaintiffs in those actions had alleged, inter alia, that soy beans delivered to them in 1972, at Reserve, Louisiana, under a contract with Cook Industries were not of the proper amount or quality. The plaintiffs claimed that when the soy beans were weighed in Taiwan, the amounts did not agree with those set forth on the weight certificates issued at Reserve, Louisiana. The similarities between the claims asserted against Cook Industries in those actions and the claims asserted by your clients in their complaint are readily apparent.

During the more than three years that these cases were pending, we understand that Mr. Meeker conducted factual and legal inquiries, prepared papers for submission to the court, and appeared for the firm on behalf of Cook Industries in court and at meetings with other counsel.

We fully appreciate the serious nature of the matters raised in this letter. However, unless the facts of which we are aware are inaccurate, we have no alternative than to request that your firm withdraw as counsel for the plaintiffs.

Please advise me by Monday, July 26, 1976, as to whether your firm will voluntarily withdraw. May I also suggest that under the circumstances we agree that all further proceedings involving Cook Industries be held in abeyance pending your voluntary withdrawal, or in the event that your firm does not do so, pending a decision of the court on the motion which we will make to have your firm disqualified.

Please do not hesitate to call me if you desire any additional information or to meet with me to discuss the matter further.

Very truly yours,

Victor S. Friedman

VSF/ps

STIPULATION EXTENDING DEFENDANTS' TIME TO ANSWER TO SEPTEMBER 30, 1976 (pp. 57a-58a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

COOK INDUSTRIES, INC. and COOK AND COMPANY,

Defendants.

----------x

STIPULATION

76 Civ. 2001

(R.J.W.)

IT IS HEREBY STIPULATED AND AGREED, by and between Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants, and Delson & Gordon, attorneys for plaintiffs that:

(a) the time within which defendants may move, answer or otherwise respond to the Summons and Complaint in this action is hereby extended to and including September 30, 1976; and

(b) neither plaintiffs nor defendants shall commence discovery, move or otherwise proceed in connection with this action prior to September 30, 1976; provided, however, that nothing herein shall prevent (i) defendants from moving prior to September 30, 1976 to disqualify Delson & Gordon as counsel for plaintiffs; and (ii) both the plaintiffs and defendants

may conduct discovery and other proceedings incident to any such motion by defendants, and further the plaintiffs and their attorneys by executing this Stipulation do not concede the propriety of such motion for disqualification by the defendants.

Dated: New York, New York
July 28, 1976

DELSON & GORDON

By _____
Alvin H. Meadow
A Member of the Firm
Attorneys for Plaintiffs

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By _____
Victor S. Friedman
A Member of the Firm
Attorneys for Defendants

AFFIDAVIT OF FREDERICK W. MEEKER IN OPPOSITION TO MOTION TO DISQUALIFY WITH EXHIBITS ANNEXED (pp. 59a-139a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

76 Civ. 2001 (RJW)

COOK INDUSTRIES INC. and COOK AND COMPANY,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FREDERICK W. MEEKER, being duly sworn, deposes and says:

1. That I am an attorney and counsellor-at-law duly admitted to practice in the courts of the State of New York and in the United States District Court for the Southern District of New York. I have been associated with the firm of Delson & Gordon, Esqs., attorneys for the plaintiffs herein, since April 5, 1976.

2. I submit this affidavit in opposition to the motion by the defendants ("Cook") to disqualify Delson & Gordon as counsel for the plaintiffs, and further barring Delson & Gordon from acting as counsel or assisting any counsel in this action or in any similar action against the defendants.

3. I deny having acted as an attorney for Cook in any matter substantially related to the present action pending before this court. That the actual litigation of the soybean matter referred to in the moving affidavit was not related to the present litigation is clear from the facts below. Furthermore, I deny that as a result of my prior representation of Cook that I had access to or gained any knowledge with respect to Cook's business which was of a confidential nature or which in any way could be of assistance with respect to the facts which are the subject of the present litigation. My association with the firm of Delson & Gordon does not in any way present any conflict with my previous representation of Cook. Since I did not gain any special knowledge with respect to Cook's affairs as a result of the prior representation, obviously no such information was or could have been communicated to the firm of Delson & Gordon.

4. I attended the Fordham Law School at night, taking a course which lasted four years and I was graduated in June, 1972. I was admitted to practice on March 5, 1973. Shortly prior to my graduation, I became associated with the firm of Hill, Rivkins, Carey, Loesberg & O'Brien, Esqs., of New York, New York ("Hill, Rivkins"). The Hill, Rivkins firm is composed of eleven partners, two counsel and nine associates--twenty-two attorneys in all. Annexed hereto as Exhibit "A" is a copy of pages 360B and 361B of the Martindale-Hubbell Law Directory setting forth the membership of the Hill, Rivkins firm.

5. The Hill, Rivkins firm specializes in the practice of admiralty law including the defense and prosecution of cargo claims. During the period of nearly four years with the Hill, Rivkins firm, I spent the major portion of my time prosecuting and defending various cargo claims on behalf of numerous clients of the firm. As an associate, and under the supervision of the partners of the firm, I worked on about a thousand cases, a substantial portion of which were cargo claims.

6. At any time, I had on my docket about 350 matters, most of them being cargo claims. It was the practice of that

firm that most cargo claims were handled on the basis of documents (i.e. the weight certificates, bills of lading, etc.).

7. On the basis of my experience in maritime matters, I responded to an advertisement by Delson & Gordon who were looking for an associate with such experience. Following conferences at that firm, I became associated with Delson & Gordon effective April 5, 1976 to work primarily on admiralty matters.

8. The firm of Delson & Gordon is counsel to the Government of India and other foreign governments, as well as to private shipping interests. The Delson & Gordon firm handles numerous admiralty matters for these governments and other clients.

9. As an associate of the Hill, Rivkins firm, I did not have access generally, nor did I generally review the files of Cook either in the possession of the Hill, Rivkins firm or at the corporate offices of the defendants; nor did I have access to any detailed, confidential or specialized information with respect to Cook's business operations. I did not engage in any general representation of Cook. I did not have access to and did not learn of Cook's operating procedures or personnel.

10. Cook asserts that solely as a result of my participation in the representation of Cook in the soybean matter* I, and the firm of Delson & Gordon, must be disqualified from representing India in the action presently before this court. The basis for such assertion by the defendants is that I was "in effect" the attorney in charge of the soybean matter and that the issues of such case are substantially related to the present action. These assertions are patently incorrect, as can be seen by an examination of the record.

11. In the present action, India alleges that Cook knowingly short-weighed, diverted and misgraded wheat sold to India by means of a fraudulent conspiracy between Cook and licensees of the United States Government who issued false certificates of weight, quality and grade, for the purpose of deceiving India. I have been informed that the fraudulent practices alleged were brought to the attention of India as a result of the press reports of investigations into illicit practices of Cook, and other large grain suppliers, by the United States Department of Agriculture, several committees

*The full title of the consolidated action is as follows: "Shui Fa Oil Mill Co., Ltd., et al., plaintiffs v. M/S 'Norma' and Austin Navigation Corp., Ltd., defendant and third party plaintiff, v. Cook Industries, Inc., third party defendant (S.D.N.Y. 73 Civ. 250 [CES]), and Shui Fa Oil Mill Co., Ltd., v. Cook Industries, Inc., (S.D.N.Y. 73 Civ. 251 [CES])".

of the Congress, the General Accounting Office and by the United States attorneys in several districts.

12. Insofar as the defendant Cook was concerned, the published record of the hearing held on June 19, 1975 by the Subcommittee on Foreign Agricultural Policy of the United States Senate Committee on Agriculture and Forestry, includes, as additional material, a report from the Des Moines Register to the effect that the records of the Department of Agriculture showed that exports from Cook's grain elevator exceeded grain received at such elevator by 18.6 million bushels for the period 1971-1973 and that one source said "the large difference could be accounted for only by shortweighing, by thefts, or by unusually faulty record-keeping".(pp. 153-155) See Exhibit "B" annexed hereto.

13. On May 6, 1976, an indictment was handed up in the United States District Court for the Eastern District of Louisiana charging Cook with various corrupt acts and practices including the theft of grain loaded on ships for export at the Bayside Grain Elevator in Reserve, Louisiana. The indictment specifically charges Cook with

short-weighing ships bound for India. (Count 1, Overt Acts (1) and (3)). A copy of this indictment is annexed hereto as Exhibit "C". Cook filed a plea of nolo contendere to this indictment, was convicted and was sentenced to the maximum fine of $10,000 on each of the thirty-seven counts of the indictment.

14. An examination of India's complaint herein makes it clear that the charge in this civil action is similar to that in the criminal action, namely, the fraud perpetrated on India by Cook's corrupt practices in conjunction with the government licensed weighmasters and inspectors over a large number of years, in many ports and with several grain elevators throughout the United States, causing multi-million dollar losses to India and for such wrongs, India seeks punitive damages as well.

15. The gravamen of the complaint is the charge that Cook defrauded India out of millions of dollars over a period of approximately eleven years by causing government licensed weighmasters to issue false weight certificates; by fraudulently manipulating the scales on which grain was weighed; by causing its personnel to bypass their scales and divert grain to Cook's own use; by causing inspectors to issue false grade

certificates, thus permitting the shipment of lower grade, poorer quality and lower value grain than grain specified in the purchase agreements and inspection certificates and to issue false certificates as to the condition of the grain and the vessels on which it was loaded. (Paragraph 19) Several causes of action seeking compensatory and punitive damages are alleged on the basis of these wrongful acts.

16. In contrast with the instant case, the soybean matter, commenced in 1973 before the grain frauds were publicized, was in effect a comparatively minor cargo claim seeking damages of $36,000, including the claim for damage to the cargo in transit. That case did not in any way concern Cook's loading or weighing practices or any allegations of fraud, consipiracy, deception or illicit activity.

17. In that case, the purchasers of soybeans from Cook claimed that the shipment delivered in Taiwan was "in a short, slack and damaged condition". (Complaint, paragraph 4, movant's Exhibit 3) In the complaint against Cook, the plaintiffs alleged that they were not certain as to whether Cook, who was a space charterer of the vessel as well as the vendor, or the owner of the vessel, was liable for the short delivery. (Paragraph 5) The plaintiffs raised no issue

as to any fraud or other wrongdoing by Cook in connection with loading or the certification of the cargo weight at loading.

18. In a second action, the purchaser of the soybeans sued the carrier, Austin Navigation Corp., Ltd. Here, plaintiffs alleged that "there was delivered to defendants [the carrier] at Reserve, Louisiana, certain shipments of yellow soybeans as described in a schedule annexed hereto and marked Schedule "A", in good order and condition. . . " (Paragraph 5, movant's Exhibit 2). This complaint thereafter again stated that plaintiffs were not certain whether the carrier or Cook was responsible for the damage and shortage found on delivery. (Paragraph 7)

19. The carrier impleaded Cook with respect to the short-weight claim only. The carrier's first and second counts in the Amended Third Party Complaint (not attached to the moving papers) annexed hereto as Exhibit "D", sought indemnification for its liability for cargo damage and cargo loss on the ground that Cook breached its space charter party with the carrier. In the third count, the carrier alleged that if the short-weight on delivery was established, Cook, as the supplier of the cargo, would be liable to the carrier because

pursuant to the U.S. Carriage of Goods by Sea Act, the supplier guaranteed to the carrier the accuracy of the weight at loading.

20. The question of whether or not Cook arranged for a false weight certificate or participated in short-weighing was not raised by either the complaint or the third party complaint and was never an issue in the soybean matter. The issues in the third party complaint, i.e., Cook's liability to the carrier under the space charter or its liability to the carrier under COGSA are not raised in the present litigation by India.

21. On the present motion, Cook relies, in part, upon a portion of the court's decision denying Cook's motion to dismiss the soybean case on the ground that there were no substantial questions of law or fact at issue. Annexed hereto as Exhibit "E" is a complete copy of that decision.* It is apparent from the entire decision that the court denied that motion because the moving papers failed to comply with the requirements of Rule 56 of the Federal Rules of Civil Procedure, and in addition, failed to provide a statement pursuant to Rule 9g of the General Rules of the United States District Court, and <u>not</u> because the court found any genuine

*Not annexed to the moving affidavit, although referred to as Exhibit 4 in paragraph 8 thereof.

issue of fact. The court ruled that my affidavit was insufficient as I had no actual knowledge of the facts stating:

> "Both plaintiffs and Austin Navigation contend that summary judgment is not warranted in the instant case because of (1) disputed questions of fact, including specifically the weight of the soybeans loaded onto the M/S Norma in Louisiana; and (2) Cook's failure to comply with Federal Rule 56(e), requiring affidavits in summary judgment motions to be based on 'personal knowledge'.
>
> Since we agree that defendant and third-party plaintiff Cook has failed to comply with the requirements of Rule 56(e), we deny its motion for summary judgment. Consequently, we need not consider whether there are 'any genuine issue(s) as to any material fact [or] that the moving party is entitled to judgment as a matter of law,' as is required by Rule 56(c)." (Page 2) (Emphasis supplied).

22. The claim for the damaged soybeans was settled between the carrier and the purchasers with no claim over aginst Cook. The nature of that damage, to the best of your deponent's recollection, consisted of sea water and oil damage.

23. The claim for the short-weight was submitted to the court on a stipulated record dated July 15, 1975 (not attached to the moving papers), a true copy of which is annexed hereto as Exhibit "F". The said stipulation admitted

into evidence the following documents as the entire trial record: the contract between plaintiffs and Cook for the purchase of the soybeans; the form of invoice used for shipment; the space charter; a schedule of bills of lading with a specimen copy; eight weight certificates issued by the Destrehan Board of Trade at Reserve, Louisiana and signed by Daniel X. Willis as chief weighmaster; an affidavit by Daniel X. Willis, chief weighmaster at the Destrehan Board of Trade, which affidavit was accepted as his testimony; a surveyor's report; plaintiffs' answer to interrogatories; and a letter from Mr. Jack Berg, vice president of Continental Grain Company, which was accepted as the testimony of Mr. Berg.

24. This record did not contain a single shred of evidence contraverting the authenticity, validity, veracity or accuracy of the information contained on bills of lading or the weight certificates issued by the Destrehan Board of Trade at Reserve, Louisiana. On February 20, 1976, based upon the stipulated record, Judge Stewart decided:

> "Here, defendant Cook, who arranged for the shipment of the goods, has shown by the bill of lading issued by Austin and by the weight certificates that it [Cook] delivered the full contract amount of soybeans to the carrier. Kupfermann v. United States, 227 F.2d 348, 350 (2d Cir. 1955). Plaintiffs have offered nothing to dispute the validity of these documents. Thus, plaintiffs' charge that Cook breached its contract for failure to deliver the full amount must fail and plaintiffs' complaint against Cook is dismissed." (Page 4, movant's Exhibit 4)* (Underscore added)

*Referred to as Exhibit 3 in paragraph 4 of the moving affidavit.

25. While the soybean litigation was pending for three years, as far as I can recall or determine from an examination of the court docket (annexed hereto as Exhibit "G"), the only actions taken by me were the preparation of answers to the various complaints; an unsuccessful motion for a stay pending arbitration under the charter party; a request for admissions; the unsuccessful motion for summary judgment; the stipulated record and memoranda related to the above. In addition, I attended several pretrial conferences in court and a settlement conference at the office of one of the attorneys.

26. As none of the parties in the soybean matter ever questioned the validity or accuracy of the weight certificates or the bills of lading, I had no cause to investigate these issues, and in fact, I did not investigate or in any way look into the activities of Cook with respect to the issuance of such bills of lading and weight certificates. This case was handled in the same routine manner as the multitude of other cargo claims assigned to me at the Hill, Rivkins firm, i.e., on the basis of the shipping documents.

27. When I received the soybean file, it contained copies of the weight certificates and bills of lading. These documents were standard forms. They were regular in appearance

and there was nothing peculiar about them which required inquiry. These forms on their face reveal no information which suggested that they might have been fraudulent or that Cook had caused the issuance of any false weight certificates.

28. The only potential witness I contacted on behalf of Cook during the soybean matter was Mr. Daniel X. Willis, the chief weighmaster at the Destrehan Board of Trade, whose name appeared on the weight certificate. I telephoned him solely to enable me to prepare his affidavit (copy of which is Exhibit 7 in the stipulated record). Mr. Willis confirmed to me the facts contained in his affidavit, namely, that he was the person responsible for the issuance of the weight certificate and that the certificate was accurate. Mr. Willis was not an employee of Cook. He was employed by the Destrehan Board of Trade, a separate and independent entity licensed by the United States Department of Agriculture to weigh grain and issue certificates of weight. My discussion with Mr. Willis related solely to the particular weight certificate involved in the soybean litigation and not to Cook's loading procedures or any other activity by him, his employer or by Cook.

29. By agreement of all parties, I contacted Mr. Jack Berg, a vice-president of Continental Grain Company, and requested that he prepare a letter stating what he believed to be the normal shrinkage occurring in the shipment of a cargo of soybeans from New Orleans to Taiwan. Mr. Berg was not an employee of Cook. I knew him as an arbitrator active in cargo cases and knew that the parties would accept him as an impartial witness. My discussions with Mr. Berg related solely to the shrinkage of soybeans and we did not discuss the loading procedures or any other activity of the personnel of Cook.

30. At the risk of repetition, let me state unequivocally that the issues raised in the soybean matter did not require me to investigate the loading procedures at Reserve, Louisiana. I did not inquire into the names of Cook's personnel at Reserve, Louisiana or the activities of Cook in connection with the issuance of bills of lading, weight certificates, inspection certificates, loading practices or any aspect of its business and, in fact, I did not conduct any such investigations and no such information came to my attention. The other parties to the litigation did not conduct any discovery of Cook although a notice to take Cook's deposition was served. The issues in that case did not

require me to contact any employee of Cook and, in fact, I did not contact any employee of Cook. Mr. Friedman is incorrect in his averments (Paragraph 7) that I did any of the foregoing.

31. The purchasers of the soybeans and the carrier did not present any evidence indicating that the weight certificates issued by the Destrehan Board of Trade were inaccurate or that Cook engaged in any wrongful conduct. The very same documents contained in the motion for summary judgment were included in the stipulated record and the court, based upon the stipulated record, then dismissed the action against Cook.

32. While I did not have contact with any employee of Cook in the handling of the soybean matter, I did communicate with Cook's counsel, John Reams, Esq., a member of the law firm of Ireland, Reams, Henderson & Chafetz, Esqs., of Memphis, Tennessee. I reported to him on the progress of the case on a few occasions and I telephoned him concerning my proposed telephone call to Mr. Willis of the Destrehan Board of Trade for the purpose set forth above.

33. On May 3, 1976, I called Mr. Reams to inform him that I was then associated with Delson & Gordon, that this

firm represented India and was about to file this action against Cook on behalf of India. Mr. Reams did not object to my participation in the representation of India in this matter, and in fact, asked me to provide him with certain information with respect to this action. In response to Mr. Reams' request, I wrote to him* by letter dated May 4, 1976 forwarding to him the vessel listing and a copy of the proposed complaint. (Movant's Exhibit 5)

34. Since becoming associated with Delson & Gordon, in addition to working on maritime matters for India and other clients, I have assisted in the prosecution of this action and the similar actions brought by India against other grain companies under the supervision of three partners of that firm, to wit, Messrs. Robert Delson, Norman Moloshok and Alvin H. Meadow. In that connection, I was requested to prepare a notice under Title 7 CFR, Section 102.37 to fourteen grain elevators requiring them to retain certain records. The letter dated June 7, 1976 addressed to the Bayside Elevator Company, copy of which is annexed to the moving papers as Exhibit 6, is one of such fourteen letters.

35. I can unequivocally state, in all candor and in good conscience, that my activities at the Hill, Rivkins

*Mr. Friedman's affidavit (Paragraph 9) refers to this letter to Mr. Reams as a letter written to Cook.

firm on behalf of Cook in the soybean matter were not related in any way to the present action pending before the court. I only had access to the soybean contracts and shipping documents contained in the file, most of which documents are part of the stipulated record annexed hereto. I had no contact with Cook personnel. I had no access to Cook's records, except the shipping documents directly related to the soybean matter. I was not privy to any confidential information concerning Cook's business, personnel or practices.

WHEREFORE, it is respectfully requested that the motion of the defendants herein to disqualify the firm of Delson & Gordon as counsel for the plaintiffs and barring Delson & Gordon from acting as counsel or assisting any counsel in this or any similar action and granting such other and further relief as to the court may seem just and proper be denied in all respects.

Frederick W. Meeker

Sworn to before me this
19th day of August, 1976.

Sarah R. Morse

SARAH R. MORSE
NOTARY PUBLIC, State of New York
No. 31-0231600
Qualified in New York County
Commission Expires March 30, 1978

HILL, BETTS & NASH (Continued)

Preparatory education, Fordham University (A.B., 1936); legal education, Fordham University (LL.B., 1939).

Stephen J. Murray, born Philadelphia, Pennsylvania, January 27, 1943; admitted to bar, 1968, New York. Preparatory education, Brown University (A.B., 1963); legal education, Harvard University (LL.B., 1966) and George Washington University Graduate Law Center (LL.M., in International Trade and Finance law, 1967). *Member:* The Association of the Bar of the City of New York; New York State Bar Association.

Daniel K. Read, born East Orange, New Jersey, July 21, 1934; admitted to bar, 1967, Virginia and District of Columbia; 1968, New Jersey (Not admitted in New York). Preparatory education, Williams College (B.A., 1957) and Massachusetts Institute of Technology (M.S., 1958); legal education, University of Virginia (LL.B., 1967). *Fraternity:* Delta Theta Phi. Member, University of Virginia Law Review, 1966-1967. *Member:* Essex County, New Jersey State and The Virginia Bar Associations; Institute of Aeronautical Sciences. [Capt., U.S. Air Force, 1958-1964]

Francis H. McNamara, born New York, N. Y., August 12, 1941; admitted to bar, 1968, New York. Preparatory education, Manhattan College (B.A., 1963); legal education, New York University (J.D., 1968).

Joseph R. Beall, born Cincinnati, Ohio, February 9, 1920; admitted to bar, 1956, New York. Preparatory education, New York University (B.A., 1941); legal education, New York University (LL.B., 1956).

Gregory W. O'Neill, born New York, N. Y., October 15, 1945; admitted to bar, Fordham University (A.B., 1967); legal education, Fordham University (J.D., 1972). *Member:* New York State Bar Association. Language: Spanish.

Lloyd De [illegible]os, born New York, N. Y., March 22, 1949; admitted to bar, 1973, New Jersey; 1975, New York. Preparatory education, Kent State University (B.A., 1970; B.B.A., 1970); legal education, Georgetown University (J.D., 1973). *Member:* New Jersey State and American Bar Associations.

John P. Love, born New York, N. Y., October 14, 1943; admitted to bar, 1974, New York. Preparatory education, Iona College (B.A., 1965); legal education, Fordham University (J.D., 1973). *Member:* New York State Bar Association. [Lieut., U.S. Navy Reserve, 1966---]

Joseph F. Aman, born Rochester, New York, April 12, 1944; admitted to bar, 1972, California; 1973, New York. Preparatory education, Fordham University (A.B., 1966; M.A., 1969); legal education, Columbia University (J.D., 1971). Member, Board of Editors, Columbia Journal of Transnational Law, 1970-1971.

(See biographical card at Tokyo, Japan, Vol. IV)

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN

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Robert E. Hill (1894-1957).

Gregory S. Rivkins (1897-1961).

MEMBERS OF FIRM

J. Edwin Carey, born New York, N. Y., August 29, 1923; admitted to bar, 1951, New York. Preparatory education, Manhattan College; legal education, St. John's University (LL.B., 1951). *Fraternity:* Phi Delta Phi. Member, St. Thomas More Society, President, 1948-1949. *Member:* New York State and American Bar Associations; Maritime Law Association of the United States (Chairman, Membership Committee, 1958-1960;

(This card continued)

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN (Continued)

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Alan S. Loesberg, born Orange, New Jersey, June 14, 1926; admitted to bar, 1957, New York and Maryland. Preparatory education, United States Merchant Marine Academy (B.S., 1946) and Georgetown University School of Foreign Service (B.S.F.S., 1950); legal education, George Washington University (LL.B., 1956). *Member:* Maritime Law Association of the United States.

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Leo P. Cappelletti, born Union City, New Jersey, October 1, 1909; admitted to bar, 1931, New York. Legal education, St. John's University (LL.B., 1930). *Member:* Maritime Law Association of the United States.

Martin B. Mulroy, born Brooklyn, New York, May 13, 1930; admitted to bar, 1961, New York; 1971, New Jersey. Preparatory education, St. John's University (B.B.A., 1956); legal education, St. John's University (LL.B., 1960). Special Agent, Federal Bureau of Investigation, 1964-1966. *Member:* Middlesex County, New Jersey State and New York State Bar Associations; Maritime Law Association of the United States.

Vincent J. Ryan, born Babylon, New York, August 20, 1922; admitted to bar, 1951, New York. Preparatory education, Union College (A.B., 1949); legal education, New York Law School (LL.B., 1951). *Member:* Maritime Law Association of the United States.

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Raymond P. Hayden, born Rochester, New York, January 15, 1939; admitted to bar, 1963, New York; 1967, U.S. Supreme Court. Preparatory education, Syracuse University and New York State Maritime College (B.S., 1960); legal education, Syracuse Law School (LL.B., 1963). *Fraternity:* Phi Delta Phi (Exchequer, 1962-1963). *Member:* New York State Bar Association; Maritime Law Association of the United States.

Allan B. Lutz, born Harrisburg, Pennsylvania, March 5, 1908; admitted to bar, 1935, New York; 1946, Michigan. Preparatory education, Yale University (Ph.B., 1931); legal education, Yale University (LL.B., 1934). Special Assistant Attorney General, 1941-1945. Attorney, Admiralty and Shipping Section, U. S. Department of Justice, 1941-1945. Associate Editor, American Maritime Cases, 1963—. *Member:* New York County Lawyers Association; Maritime Law Association of the United States.

James M. Hastie, born Port Chester, New York, December 1, 1912; admitted to bar, 1945, New York. Preparatory education, New York University (B.S., 1932); legal education, New York University (J.D., 1937). *Fraternity:* Phi Delta Phi. Village Attorney, Village of Great Neck Plaza, 1945-1967. Police Justice, Great Neck Plaza, 1947-1955. Special Counsel, Town of Oyster Bay Board of Appeals, 1957—. *Member:* Maritime Law Association of the United States.

Donald M. Burke, born New York, N. Y., November 8, 1935; admitted to bar, 1963, New York. Preparatory education, Colgate University (A.B., 1957); legal education, Fordham University (LL.B., 1963). *Member:* The Association of the Bar of the City of New York; Maritime Law Association of the United States. [Lieut., (jg) U.S. Navy, 1957-1960]

COUNSEL

George B. Warburton, born Brooklyn, New York, November 9, 1905; admitted to bar, 1929, New York; 1948, U.S. Supreme Court; 1973, Maryland. Legal education, Brooklyn Law School of St. Lawrence University (LL.B., 1927). *Fraternity:* Delta Theta Phi. *Member:* Maritime Law Association of the United States. (Also practicing individually in Chestertown, Maryland)

Joseph T. McGowan, born New York, N. Y., February 18, 1918; admitted to bar, 1942, New York; 1959, U.S. Supreme Court. Preparatory education, Fordham University (A.B., 1939); legal education, Fordham University (LL.B., 1942). *Member:* New York County Lawyers Association; Maritime Law Association of the United States.

ASSOCIATES

Peter W. Flanagan
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Robert J. Ryniker
Frederick W. Meeker
Richard H. Webber
Joseph M. Mangino
Robert E. Daley
Casper E. Ewig
Bruce J. Hector (Admitted in New Jersey Only)

GRAIN INSPECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY

AND THE

SUBCOMMITTEE ON AGRICULTURAL PRODUCTION, MARKETING, AND STABILIZATION OF PRICES

OF THE

COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

GRAIN INSPECTION IRREGULARITIES AND PROBLEMS

AND

S.J. Res. 88

TO PROVIDE EMERGENCY AUTHORITY TO THE SECRETARY OF AGRICULTURE TO RESTORE CONFIDENCE IN THE UNITED STATES GRAIN INSPECTION SYSTEM, AND FOR OTHER PURPOSES

Part 1

JUNE 19, 1975

Printed for the use of the Committee on Agriculture and Forestry

U.S. GOVERNMENT PRINTING OFFICE
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EXHIBIT B

The audit also describes a November, 1972 incident at a Continental Grain Co. elevator in Milwaukee, Wis., at which unsampled and uninspected grain was loaded aboard ships.

After samples of grain were taken other grain was added, and in the case of one soybean shipment the vessel actually was loaded with 16 per cent corn, the audit says.

In addition, the audit called for "more effective supervision of licensed inspectors" at the Farmers Export Elevator, Ama, La., saying that some grain shipments may have been short-weighted and some "off-grade" grain loaded aboard ships.

Undersecretary Campbell said that legislation proposed by Humphrey, giving the Agriculture Department emergency powers to deal with the scandal, including taking over inspection from certain inspection agencies, is unnecessary.

He promised that the department will "very quickly" send up its suggestions for a government inspection system. He said he is leaning toward a system similar to that for meat inspection, in which federal agents do the inspection unless a state government demonstrates it has an equally good inspection system, in which case state employes do the work. In either case, private inspection agencies would be eliminated.

Of the 111 present inspection agencies, 23 now are operated by states. The rest are run by boards of trade, chambers of commerce, grain exchanges, and by private individuals.

GRAIN ELEVATOR EXPORTED MORE THAN IT RECEIVED—ERRORS SEEN IN RECORDS OF SHIPMENTS—KEY PART OF PROBE IN NEW ORLEANS

(By James Risser)

WASHINGTON, D.C.—U.S. Agriculture Department (USDA) records show that a New Orleans, La., grain elevator operated by Cook Industries, Inc., apparently exported 18.6 million bushels more grain that it received over a three-year period.

The figures obtained by the Register cover grain received and grain shipped out from Cook's Bayside elevator during 1971, 1972 and 1973.

Official inspection certificates indicate that the elevator received barges, trucks and railroad cars containing 338.2-million bushels during the three years, but shipped out 356.8-million bushels.

Won't Respond

Cook officials in New Orleans and at corporate headquarters in Memphis, Tenn., did not respond to repeated attempts to contact them about the figures.

Daniel X. Willis, chief inspector for the Destrehan Board of Trade which inspects, grades and weighs grain at the Cook elevator, said of the figures: "I don't know how that could be possible." But he said he was "too busy". But he said he was "too busy" to check whether the figures match those kept by the Board of Trade.

Sources close to the current New Orleans grain inspection investigation said discrepancies between grain received and exported by several large export elevators are key parts of the probe into possible misweighing and theft of millions of dollars worth of grain. "Weighing is where the big money is," said one source.

USDA department officials admit that federal supervision of the weighing process and of the accuracy of the scales themselves is virtually non-existent. One official told the Senate Agriculture Committee Thursday that licensing of weighers is "a paper exercise."

Federal agents have obtained the records of the Cook firm, the Bunge Corp., and possibly other grain exporters, it was learned. They also have examined the books of the USDA's Transportation and Warehouse Division regional office in Memphis, which licenses grain weighers at New Orleans and other southern grain elevators.

Grand Jury

A federal grand jury is expected to resume hearing testimony next Tuesday, and more indictments are expected soon. A total of 20 individuals and companies in New Orleans and in Houston, Tex., have been indicted to date on charges of bribery or other corruption.

There have been persistent reports during the course of the investigation that some elevators have "short-weighted" shipments of grain they load onto export

vessels. This, the export inspection certificate issued by the inspection agency at the elevator would show more grain loaded onto the ship than actually was aboard.

A persistent pattern of such shipments could produce an "overage" in the elevator—that is, more grain on hand than should be there according to the records of grain coming in and going out.

The overage, sources said, could be sold by the elevator, which would then have been paid twice for the grain. In some cases, however, it is believed that the short-weighted grain was stolen by either elevator or inspection agency personnel, or both, and sold elsewhere.

One source said that federal agents are looking into a possible ring of elevator and inspection agency personnel who said barges of grain are diverted from an export elevator into a small, nearby elevator not involved in overseas trade. The small elevator then sold the grain and those included in the scheme divided the money, the source said.

False certificates were issued to cover up the fact that the grain was not actually loaded into the export elevator.

Grain export elevators in New Orleans and elsewhere have their grain inspected, graded and weighed by inspectors who hold licenses from the USDA, but who are employed by boards of trade and other private organizations.

The Destrehan board of trade for example, which provides inspection services at both the Cook and Bunge elevators, is owned by Bryan J. Lehmann, Jr., a former Louisiana state legislator.

Perez link

Another agency said to be under scrutiny by federal agents the Delta Weighing and Inspection Bureau, is owned by Attorney Sidney W. Provensal, Jr., a lawyer closely associated with Leander Perez, the powerful political boss of Plaquemines parish.

The Delta agency inspects grain at the Mississippi River Grain Elevator Co.

At various times, the Cook, Bunge, and Mississippi river grain elevators have been put under round-the-clock supervision by the USDA's grain division office in New Orleans because of concern about possible improper practices there.

Operations at the Cook Elevator were discussed briefly at a hearing of the Senate Agriculture Committee Thursday, where it was disclosed that a 1973 USDA audit of grain inspection contains references to a proposed "investigation of Cook industries."

Violations seen

The investigation sought by the grain division in 1962 centered around eight apparent violations of the U.S. Grain Standards Act that may have been committed by the Cook Industries.

The Probe

The investigation was sought by the department's grain division in Cook Inc., and their elevator manager at Bayside Elevator Company, Reserve, Louisiana (near New Orleans), the audit said.

Mel L. Hibbets, who was the elevator manager at the time, did not respond to telephone inquiries by The Register. He is now vice-president of the Cook Grain Division, in charge of operations and engineering at the firm's Memphis headquarters.

According to a subsequent departmental memorandum turned up by Senator Dick Clark (Dem., Ia.) the USDA office of audit did not pursue an examination of Cook Records because "information now available is not sufficient to show willful neglect."

One USDA source told The Register, however, that the Cook investigation is not closed. The source said the probe includes a check of Cook's "inventory reduction sheets" in which amounts of grain in and out of the elevator do not match.

The source also said the request for an investigation of the firm involved claims that a Destrehan board of trade inspector was ordered by a Cook official not to issue a cleanliness certificate to a ship which had arrived at the Cook dock to be loaded. The reason was said to be that the firm did not have enough grain in the elevator to load the ship with the amount of grain it had contracted to sell.

Another shipload of grain being sold by Cook was involved in an incident in 1973 that led to the indictment of a Destrehan grain sampler—Lawrence J. Berthelot.

According to the grand jury indictment issued last August, Berthelot improperly sampled corn being loaded aboard the M.V. Belnor at the Cook elevator Nov. 28, 1973. Berthelot pleaded guilty to one count of improper sampling, and another count of perjury was dismissed. He received a fine and probation.

Sour Corn

According to USDA officials, sour corn was being loaded aboard the ship but was not reflected in the corn samples taken by Berthelot to be used in grading the grain. The incident came to light when a USDA supervisory inspector discovered the bad corn and stopped the loading.

USDA Records

USDA records examined by The Register show grain received and shipped each month from the 4.5 million-bushel capacity Cook elevator.

In some months, grain received exceeded grain shipped, and in other months, the situation was reversed. But over the entire three-year period, the records indicate, exports exceeded grain received by 18.6 million bushels.

If 1971 is eliminated, and only 1972 and 1973 figures are used, the difference is even greater—23.5 million bushels—because in 1971 grain received was somewhat greater than grain sent out.

Doing the calculations a different way, using federal fiscal years, the Cook elevator between July 1970, and June, 1974, exported 21.4 million bushels more than it received during the period.

Federal sources said that over such a period of time, the amount of grain received and the amount shipped should very nearly balance. One source said the large difference could be accounted for only by shortweighting, by thefts, or by unusually faulty record-keeping.

O

UITED STATI DISTRICT COURT

EASTERN DIST. ICT OF LOUISIANA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION NO.
versus	:	SECTION 76-279
COOK INDUSTRIES, INC.	:	VIOLATIONS:

INDICTMENT

SECTION B

The Grand Jury charges that:

COUNT 1

A- AT ALL TIMES HEREIN:

1- Defendant COOK INDUSTRIES, INC., was a Delaware corporation with its principal place of business in Memphis, Tennessee, engaged in the business of grain merchandising, including the export of grain in foreign commerce, from among other places, the BAYSIDE GRAIN ELEVATOR, Reserve, Louisiana, a division of the Bayside Warehouse Company, a Texas corporation wholly-owned by Cook Industries, Incorporated. The Bayside Warehouse Company was licensed and bonded to operate the Bayside Elevator Company by the United States Department of Agriculture ("USDA"), under the provisions of the United States Warehouse Act (Title 7, United States Code, Section 241, et seq), on March 19, 1970 and bearing license number 3-5627.

B. CONSPIRACY:

From on or about the Summer of 1970 to approximately February 1, 1975, in the Eastern District of Louisiana, the defendant COOK INDUSTRIES, INC., willfully, and knowingly, agreed and conspired with other co-conspirators, and aided and abetted each other to commit criminal offenses against the United States of America, to wit:

(1) To conspire to embezzle, steal, take, carry away, and conceal by fraud and disception with intent to convert to their own use goods and chattels of a value in excess of $100, from vessels which were moving as, were part of, and constituted interstate and foreign shipments of property, that is, quantities of grain from ships loadi... for export at the Bayside Grain Elevator in t...

District of Louisiana to foreign ports; all in violation of Title 18, United States Code, Section 659.

C. WAYS, MEANS, AND MANNER TO ACCOMPLISH THE CONSPIRACY:

It was part of the conspiracy that the defendant and its co-conspirators would do and did the following:

(1) Defendant and other co-conspirators did, during the course of loading ships with grain for export and foreign commerce at the Bayside Grain Elevator in Reserve, Louisiana, manipulate scales used to weigh grain immediately prior to loading on board ship and caused the scales to register an incorrect weight, thereby causing less grain to be placed on board than was recorded and called for by contract. This practice is hereinafter called "shortweighing."

(2) The shortweighing was accomplished by the defendant and other co-conspirators causing weighers employed by Bayside Grain Elevator at various times to manually by-pass the scale used to weigh grain prior to loading on board ships and register weights when in fact the grain was not weighed and not loaded on board ship.

(3) That the defendant and other co-conspirators did cause periodic adjustments to be made to the Elevator stock inventory records and to the records of Cook Industries, Inc., to account for the grain acquired by shortweighing.

(4) That these adjustments were, in part, accomplished by the falsification of Cook Industries, Inc., records to show the receipt of barge loads of grain at Bayside Grain Elevator which receipts did not in fact occur.

(5) That these adjustments included the preparation of false and fictitious grain inspection and weight certificates under the provisions of the United States Warehouse Act, which certificates were prepared by licensed weighers and inspectors employed by the defendant Cook Industries, Inc., under the provisions of the Act, at the direction of the other co-conspirators.

D. OVERT ACTS

In furtherance of the conspiracy and to effectuate the objects thereof, the defendant and its co-conspirators performed the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

(1) During the Summer of 1970, a meeting of three co-conspirators who were officers of the defendant corporation was held at an area near the Mississippi River behind the Rivermont Hotel in Memphis, Tennessee. During the meeting, instructions were given to begin shortweighing by up to one and one-half percent (1 and 1/2%) ships loading at the Bayside Grain Elevator and bound for Mediterranean and Middle Eastern ports, particularly ships bound for Greece, Spain, India, Korea and Pakistan. Instructions were also given to short vessels bound for Rotterdam and Germany by only one-eighth of one percent (1/8 of 1%).

(2) Shortly after the meeting described in Overt Act Number 1, employees of Cook Industries, Inc., began shortweighing ships as instructed.

(3) During the Fall of 1970, an officer of Cook Industries, Inc., gave instructions to employees at the Bayside Grain Elevator to increase the shortweighing up to three percent (3%) on ships bound for Pakistan, India, and other Middle Eastern countries that did not have weighing facilities.

(4) to (21), inclusive. On the dates listed below, the defendant and other co-conspirators did falsify or cause to be falsified inspection and weight certificates to show the fictitious receipt of grain by barge at the Bayside Grain Elevator, to account for the excess grain accumulating in the Elevator as a result of shortweighing.

OVERT ACT	DATE	BARGE	COMMODITY	BUSHEL
4	12/30/71	JC 12F	Soybeans	42,130
5	1/28/72	JC 1702	Corn	55,480
6	2/10/72	JC 1713	Soybeans	56,132
7	1/28/72	JC 1704	Soybeans	43,240
8	7/17/72	CKI 585	Wheat	41,376
9	7/17/72	CKI 685	Wheat	38,624
10	11/18/72	CKI 196	Soybeans	29,872
11	11/18/72	CKI 281	Wheat	50,036
12	11/30/72	CKI 281	Corn	40,000
13	8/13/73	CKI 281	Corn	52,340
14	8/13/73	CKI 169	Corn	55,620
15	8/17/73	CKI 173	Corn	52,470
16	11/23/73	CKI 169	Soybeans	49,440
17	11/23/73	CKI 281	Soybeans	48,560
18	11/23/73	CKI 173	Corn	49,755
19	11/23/73	CKI 283	Corn	48,745
20	1/31/75	CKI 525	Corn	49,678
21	2/1/75	CKI 535	Soybeans	51,367

(22) During July 1972, a co-conspirator and officer of the defendant corporation gave written instructions to an employee of Bayside Grain Elevator to shortweigh the following vessels by a certain percent of the gross weight of the grain to be put on board:

(1) Delta Uruguay - 1%

(2) Captain Demosthenes - 2-1/2% to 3%

(3) Del Oro - 1%

(4) Troll Forest - 1%

(5) Golden Gate - 2-1/2% to 3%

(6) Pearl Asia - 1%

(7) Eagle Voyager - 2-1/2% to 3%

(23) After receipt of the instructions described in Overt Act Number 22, co-conspirators caused the shortweighing of the ships named in Overt Act Number 22.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2 - 37

1. The allegations in paragraph 1 of Count 1 are incorporated in each of the 36 separate counts numbered 2 - 37.

2. On or about the dates shown below in the Eastern District of Louisiana, COOK INDUSTRIES, INC., in a matter within the jurisdiction of the Department of Agriculture of the United States, did wilfully and knowingly use a false writing and document containing materially false, fictitious and fraudulent statements, knowing the same to contain such statements, in that United States Warehouse Act grain weight certificates and grain inspection certificates were prepared by licensed inspectors and weighers employed by COOK INDUSTRIES, INC. to show the receipt of certain types and quantities of grain as listed below by barge at the Bayside Grain Elevator, whereas in truth and in fact as the defendant then knew, no such barge loads of grain existed as described in the certificates; resulting in a violation of each of the below listed 36 separate certificates by defendant COOK INDUSTRIES, INC. of Title 18, Section 1001, as follows:

OUNT	DATE	BARGE NO.	COMMODITY	NO. OF BUSHELS	INSPECTION OR WEIGHT CERTIFICATE NO.	WEIGHER OR INSPECTOR
2	12/30/71	JC-12B	Soybeans	42,130	0175	Flavian Vicknair
3	12/30/71	JC-12B	Soybeans	42,130	1560	Billy Hall
4	1/28/72	JC-1702	Corn	55,480	0235	Ralph H. Simon
5	1/28/72	JC-1702	Corn	55,480	1622	Barry J. Richard
6	2/10/72	JC-1713	Soybeans	56,132	0247	Flavian Vicknair
7	2/10/72	JC-1713	Soybeans	56,132	1633	Russell R. Rebowe
8	1/23/72	JC-1704	Soybeans	43,240	0237	Ralph Simon
9	1/23/72	JC-1704	Soybeans	43,240	1623	Barry J. Richard
10	7/17/72	CKI-585	Wheat	41,376	0292	Flavian Vicknair
11	7/17/72	CKI-585	Wheat	41,376	1687	Anthony V. Sparacello

POINT	DATE	BARGE NO.	COMMODITY	NO. OF BUSHELS	INSPECTION OR WEIGHT CERTIFICATE NO.	WEIGHER OR INSPECTOR
12	7/17/72	CKI-685	Wheat	38,624	0291	Flavian Vicknair
13	7/17/72	CKI-685	Wheat	38,624	1688	Anthony V. Sparacello
14	11/18/72	CKI-196	Soybeans	29,872	0394	Ibrhahim E. Iskandar
15	11/18/72	CKI-196	Soybeans	29,872	1804	Wilton J. Madere, Jr.
16.	11/18/72	CKI-281	Wheat	50,036	0393	Ibrhahim E. Iskandar
17	11/18/72	CKI-281	Wheat	50,036	1803	Wilton J. Madere, Jr.
18	11/30/72	CKI-281	Corn	40,000	0402	Flavian Vicknair
19	11/30/72	CKI-281	Corn	40,000	1815	Bill Hall
20	8/13/73	CKI-281	Corn	52,340	0504	Flavian Vicknair
21	8/13/73	CKI-281	Corn	52,340	1962	Bill Hall
22	8/13/73	CKI-169	Corn	55,620	0505	Flavian Vicknair
23	8/13/73	CKI-169	Corn	55,620	1964	Bill Hall
24	8/17/73	CKI-173	Corn	52,470	0507	Flavian Vicknair
25	8/17/73	CKI-173	Corn	52,470	1967	Bill Hall
26	11/23/73	CKI-169	Soybeans	49,440	0570	Ibrhahim E. Iskandar
27	11/23/73	CKI-169	Soybeans	49,440	2032	Floyd J. Sutton, Jr.
28	11/23/73	CKI-281	Soybeans	48,560	0569	Ibrhahim E. Iskandar
29	11/23/73	CKI-281	Soybeans	48,560	2031	Floyd J. Sutton, Jr.
30	11/23/73	CKI-173	Corn	49,755	0571	Ibrhahim E. Iskandar
31	11/23/73	CKI-173	Corn	49,755	2033	Floyd J. Sutton, Jr.
32	11/23/73	CKI-283	Corn	48,745	0572	Ibrhahim E. Iskandar
33	11/23/73	CKI-283	Corn	48,745	2034	Floyd J. Sutton, Jr.

COUNT	DATE	BARGE NO.	COMMODITY	NO. OF BUSHELS	INSPECTION OR WEIGHT CERTIFICATE NO.	WEIGHER OR INSPECTOR
34	1/31/75	CKI-525	Corn	49,678	1041	Flavian Vicknair
35	1/31/75	CKI-525	Corn	49,678	2553	Wilton J. Madere, Jr.
36	2/1/75	CKI-535	Soybeans	51,367.	1046	Flavian Vicknair
37	2/1/75	CKI-535	Soybeans	51,367	2559	Warren J. Duffy, Jr.

All in violation of Title 18, United States Code, Section 1001.

New Orleans, Louisiana

May 6, 1976

A TRUE BILL:

Foreman of the Grand Jury

Gerald J. Gallinghouse
United States Attorney

CORNELIUS R. HEUSEL
First Assistant United States Attorney

FASTER[illegible] ... Court

MAY 6 1976

HILD

NELSON B. JONES

COOK INDUSTRIES, INC. (D)

ORDER NO. CRH. 76-279 "B" (J)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
May	6,	1976

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL John R. Hartzell, Esq.
(Name of counsel)

GUILTY, and the court being satisfied that there is a factual basis for the plea,

X NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

X GUILTY. on May 6, 1976, as to all 37 Counts.

Defendant has been convicted as charged of the offense(s) of violation of Title 18, U.S.C. Sections 1001 and 371

CONSPIRACY AND EMBEZZLEMENT

AS CHARGED IN THE INDICTMENT.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is

Fined the sum of $10,000.00 on each of the 37 Counts for a total of $370,000.00.

IT IS FURTHER ORDERED that the defendant is to pay the fine on or before Thursday, May 13, 1976, at 5:00 P.M.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FOR
PROCESS (Misc.)
CHARGE 200
INDEX
DRIVER
RECEIPT
DOCUMENT No. 16

BY
U.S. District Judge
U.S. Magistrate

Date MAY 6 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUD 66 OIL MILL CO. LTD., et al.

Plaintiffs,

- against -

M/S "NORMA", her engines, etc.,

- and against -

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

- against -

COOK INDUSTRIES INC.,

Third-Party Defendant

AMENDED THIRD-PARTY COMPLAINT

73 CIV. 250 (CES)

FILED
MAR 26 9 18 AM '75
U.S. DISTRICT COURT
S.D. OF N.Y.

Defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Amended Third-Party Complaint against the third-party defendant herein, respectfully shows to this Court and alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, third-party plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of Liberia, and was the owner of the MS "NORMA".

3. At all times hereinafter mentioned, third-party defendant was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 60 Broadway, New York, N.Y.

4. That prior to the times mentioned in the Complaint, the MS "NORMA" was chartered to the third-party defendant, and at all times hereinafter mentioned and at the times mentioned in the Complaint, the said charter party dated at New York, December 16, 1971, was in full force and effect.

5. That under the provisions of said charter, the cargo was to be discharged free of risk and expense to the vessel.

6. That at all times mentioned in the Complaint, the whole reach of the vessel's Nos. 1,3 and 5 holds were placed at the third-party defendant's disposal and under its control.

7. That on or about January 16, 1973, the plaintiffs herein filed a Complaint in this Court against the above-named defendant and third-party plaintiff. The Complaint alleges that certain shipments of yellow soybeans shipped on board the MS "NORMA" in January, 1972 at Louisiana were subsequently delivered at Kaohsiung, Taiwan. A copy of the Complaint is annexed hereto, marked Exhibit A.

8. Defendant and third-party plaintiff has performed all of the terms and conditions of the aforesaid charter party on its part to be performed.

9. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the breach of the provisions of the Charter Party on the part of the third-party defendant, its agents or servants.

10. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION

11. Repeats and realleges each and every preceding paragraph of this Amended Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

12. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the fault and neglect of, and was attributable to, the third-party defendant, its agents or servants, and not to the defendant and third-party plaintiff.

13. That by reason of the aforesaid, if there should be any liability imposed upon defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees, and if said defendant and third-party plaintiff is held responsible for the damages sustained by the plaintiffs herein, such liability will have been brought about and was caused wholly as a result of the primary and active negligence or fault of the third-party defendant, its agents or employees, without any fault on the part of defendant and third-party plaintiff contributing thereto.

AS AND FOR A THIRD CAUSE OF ACTION

14. Repeats and realleges each and every preceding Paragraph of this Amended Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

15. In addition to being a charterer of the "NORMA" at all material times, the third-party defendant was also the shipper of the cargo in suit and was designated as shipper in the covering bills of lading.

16. The U.S. Carriage of Goods by Sea Act, 1936, was of its own force and effect applicable to the bills of lading and cargo in suit.

17. Said Act provided, in part, as follows:

> "(5) The shipper [Cook] shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the . . . quantity, and weight . . .; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars . . ."

18. That if the plaintiffs' cargo suffered any loss or damage as alleged in the Complaint, which is denied, such loss or damage was occasioned solely by the failure of the third-party defendant, as shipper, its agents or servants, to furnish cargo of the quantity and weight specified in the bills of lading.

19. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees.

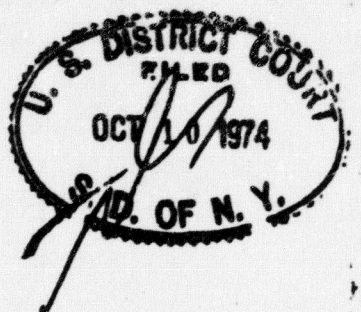
WHEREFORE, defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., demands judgment against third-party defendant COOK INDUSTRIES, INC. for any sum that may be recovered against it, together with the costs and disbursements of this action, including attorneys' fees, and for such other further or different relief as to the Court may be just and proper.

Dated: New York, N.Y.
January 28, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & STUFFLA
Attorneys for Defendant and Third-Party Plaintiff

By: Peter J. Zambito
A Member of the Firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and
Third-Party Plaintiff,

-against-

COOK INDUSTRIES, INC.,

Third-Party Defendant.

73 Civ. 250

FILED
OCT 10 1974

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

This is a breach of contract action brought by various Taiwanese corporations against the M/S Norma, her owner, the Austin Navigation Corp. Ltd., and Cook Industries, Inc., an exporting firm, alleging a shortage of some 254 metric tons of soybeans in a 1972 shipment of soybeans from Louisiana to Taiwan. Austin Navigation has filed a third-party complaint against Cook. Cook has moved to dismiss the action by plaintiffs and the third-party complaint by Austin Navigation on the grounds that no substantial questions of law or fact are in issue. Though Cook does

not state that this is a summary judgment motion, we will assume that it is.[1/]

Both plaintiffs and Austin Navigation contend that summary judgment is not warranted in the instant case because of (1) disputed questions of fact, including specifically the weight of the soybeans loaded onto the M/S Norma in Louisiana; and (2) Cook's failure to comply with Federal Rule 56(e), requiring affidavits in summary judgment motions to be based on "personal knowledge."

Since we agree that defendant and third-party plaintiff Cook has failed to comply with the requirements of Rule 56(e), we deny its motion for summary judgment. Consequently, we need not consider whether there are "any genuine issue(s) as to any material fact [or] that the moving party is entitled to judgment as a matter of law," as is required by Rule 56(c).

As indicated, Rule 56(e) requires that "(s)upporting ... affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

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1/ Moreover, we note that movant Cook has failed to comply with Rule 9(g) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York, requiring that the moving party annex to the notice of motion for summary judgment "a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried..."

affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith..." Here, Cook moves for summary judgment on the basis of affidavits by its attorney Frederick W. Meeker, one Daniel X. Willis, and supporting documents. Clearly this is insufficient. The Second Circuit has held that two attorneys' affidavits "were not based on 'personal knowledge', and therefore do not suffice under F.R.C.P. 56(e)." Subin v. Goldsmith, 224 F.2d 753, 756 (2d Cir. 1955). Accord, Antonio v. Barnes, 464 F.2d 584 (9th Cir. 1972). Since the primary issue in this case appears to be the weight of the soybeans when they were loaded onto the M/S Norma, the affidavits of Messrs. Meeker and Willis are not sufficient, since they were undoubtedly not present when the soybeans were weighed and loaded.

Cook's motion for summary judgment is denied for the reasons stated.

SO ORDERED.

United States District Judge

Dated: New York, N. Y.
October 9, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al, Plaintiffs, -against- M/S "NORMA", her engines, etc., and AUSTIN NAVIGATION CORP., LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES INC., Third-Party Defendant.	:	73 Civ. 250 (CES)
SHUI FA OIL MILL CO. LTD., et al, Plaintiffs, -against- COOK INDUSTRIES, INC., Defendant.	:	73 Civ. 251 (CES)

The undersigned attorneys for the respective parties hereto hereby stipulate and agree for the purposes of this action only to the following facts:

1. By order of this Court dated December 6, 1973 it was directed that the above entitled actions (73 Civ. 250 and 73 Civ. 251) were consolidated for all purposes under the caption of 73 Civ. 250.

2. The Court has jurisdiction over the controversies in suit.

3. Plaintiffs are duly organized corporations and were the consignees and purchasers of the cargo which is the subject matter of the within actions.

4. Defendant AUSTIN NAVIGATION CORP. LTD. (hereinafter referred to as "AUSTIN") is a duly organized corporation with an office and place of business at 25 Broadway, New York, N. Y. and at all material times was the owner of the M/S "NORMA".

5. COOK INDUSTRIES INC. (hereinafter referred to as "COOK"), defendant in 73 Civ. 251 and third-party defendant in 73 Civ. 250, was at all material times the voyage charterer of the M/S "NORMA" and the shipper and seller of the cargo in suit.

6. On or about November 19, 1971 defendant COOK entered into a contract with China Trade and Development Corp., which corporation acted on behalf of plaintiffs, to sell and arrange for shipping to Formosa of the cargo in suit stated to be 14,000 metric tons with tolerance of 5.0%. The tolerance of 5.0% referred to the fact that COOK could ship between 13,300 metric tons and 14,700 metric tons. A copy of said contract together with a copy of The Incorporated Oil Seed Association contract 79 are attached hereto as Exhibits "1-A" and "1-B".

7. A copy of the form of invoice used for the shipments in suit is attached hereto and marked Exhibit "2".

8. At the time the voyage in suit was performed, the M/S "NORMA" was operating under a space charter dated

at New York December 16, 1971 entered into between AUSTIN, as owners, and COOK, as charterers. A copy of said charter is annexed hereto and marked Exhibit "3".

9. Defendant AUSTIN, through its agent Gulf Coast Shipping Corp., issued bills of lading for the cargo in suit. A schedule describing said bills of lading is annexed hereto and marked Exhibit "4" and the form of such bills of lading is annexed hereto and marked as Exhibit "5".

10. Eight weight certificates totalling 32,409.449 lbs. or 14,700.68 metric tons, dated January 5, 1972, were issued by Destrehan Board of Trade at Reserve, Louisiana for the cargo in suit. Copies of said certificates are annexed hereto and marked Exhibits "6-A" through "6-H".

11. That if Daniel X. Willis was called to testify, his testimony would be as stated in his affidavit, copy of which is annexed hereto and marked Exhibit "7".

12. The loading stevedore at Reserve, Louisiana was paid by or on behalf of defendant AUSTIN.

13. The cargo in suit was stowed in bulk in Nos. 1, 3 and 5 holds of the M/S "NORMA". No other cargo was stowed in these holds.

14. The M/S "NORMA" sailed from Reserve, Louisiana on January 5, 1972 and arrived at Kaohsiung, Taiwan on March 2, 1972. The vessel did not call at any intermediate port to load or discharge cargo.

15. Discharging of the cargo in suit was carried out by the Kaohsiung Port Authority.

16. A surveyor employed by International Surveyor Co., acting on behalf of plaintiffs, was in attendance during the discharging and weighing of the cargo in suit. If called to testify, said surveyor's testimony would be as stated in the Surveyor's Report, copy of which is attached and marked Exhibit "8".

17. All the vessel's holds were swept by the stevedores hired by the Port Authority under the supervision of International Surveyors Co. and the vessel's holds were emptied of plaintiffs cargo.

18. Other shipments of No. 2 yellow soy beans in bulk imported by plaintiffs from the United States are described in plaintiffs' answers to interrogatories heretofore filed in this action on May 28, 1975. A copy of said answers is annexed hereto and marked Exhibit "9".

19. Plaintiffs claim is for a shortage of 254.230 metric tons and water damage to 24.88 metric tons. This stipulation is limited to the claim for shortage as the parties expect to settle the water damage claim.

20. Plaintiffs claim is for 254.230 metric tons at $127.65 per ton which amounts to $32.452.46.

21. That if Mr. Jack Berg, Vice President of Continental Grain Company, was called to testify, his testimony would be as stated in his letter dated July 11, 1975, copy of which is annexed hereto and marked Exhibit "10".

Dated: New York, N. Y.
July 15, 1975.

Attorneys for Defendant and
Third-Party Plaintiff,
Austin Navigation Corp., Ltd.

Attorneys for Third-Party
Defendant, Cook Industries, Inc.

COGSI'S CONTRACT NUMBER 5-0131-66

103a

CONTRACT DATE 11-19-71

[illegible] TRADE PLACEMENT
IA/DEL
TAIWAN

[illegible] 14,000 METRIC TONS BUSHELS 514,436.00 TOLERANCE 5.0 %

[illegible] & GRADE NO 2 YELLOW SOYBEANS OTHER SPECS FED-REAL APPEAL

$ 127.65 PER METRIC TON PRICE BASIS LOCATION C&F FORMOSA

QUANT TERMS DEC 25/JAN 15

WTS TO GOVERN LOADING OFFICIAL GRADES TO GOVERN LOADING OFFICIAL-FED AP

QUANT SCALE

RANGE C & F, BUYER ROUTING DRY CARGO GEARED NO OVER AGE

MENT TERMS PMT NET CASH IRREV DIV L/C BY PRIME US BNK NYC OPENED PRIOR LOC IN EXCH SHPG DOCS

IN DESTINATION

US GULF OR ATLANTIC KAOHSIUNG

MRKS

COVERING CONTRACT: ICSA 79 FULL OR PART CARGO SELLERS OPTION FORMOSA FIRST OR SECOND DISPORT S/O VIA EITHER JAPAN OR KOREA - DISCHARGE - BUYERS ACCOUNT * BUYERS GUAR DISCHARGE RATE OF 2,500 M/T/DAY

QUOTED PRICE	FREIGHT DISC.	FLAT PRICE	BUSHELS PRICED	BUSHELS UNPRICED (REMARKS)

BROKER NAME CTDC
RATE PAID .15000 PER METRIC TON
DATE -

ALLOC. PERIOD PH JAN 514,436

EXPORT CAK EQUALS 3.22 7/8
F.O.B. GULF FRT. 9.0000 EXTRAS .000
BANKING .00000 WT. RISK .00000 DISCHARGE .00
LOAD CHARGES [illegible] INSURANCE [illegible]

TRANSACTION DESIGNATION	FINAL SETTLEMENT VOUCHER	DATE	OPEN BALANCE	TONS LONG	INVOICE NUMBER	CONTRACT NUMBER	REMARKS
5/72 FORMOSA	540,157/29		filled	14468.504			
				equalling			
				14,700 m/t x $127.65---		$ 1,676,455.00	

(OVERFILL)

CLOSED

...UNITED STATES OF AMERICA SOYBEANS

104a Parcel 3

London, ... 19 .

1. Buyers ...
Sellers ...

on all conditions and rules stated herein.

2. THE FOLLOWING ...

... tons, say ...
... tons of 2,240 lbs./1,000 Kilos. each.

3. To be shipped in good condition from ... as per Bill or Bills of Lading dated or to be dated ... by steamer and/or steamers (Tankers excluded) direct or indirect, with or without transhipment to ...

at ... say ...
per ton of 2,240 lbs./1,000 kilos., shipped east, freight and insurance in bulk.

4. Sellers have the option of shipping 5% more or less of the contract quantity, excess or deficiency over two per cent. to be settled on the CIF price on the date of vessel's reporting—this value to be fixed by arbitration unless mutually agreed.
Barges not to be considered in the quantity deliverable under this contract.

5. Official ... certificate of inspection to be final as to quality and such certificate to be considered as proof of good condition at time of shipment. The Buyer under this contract shall not be entitled to reject a tender of a higher grade of the same colour and description.

6. The beans are not warranted free from defect rendering those unmerchantable which would not be apparent on reasonable examination.

7. The cut-tare to be computed at 1,016 kilos. equal to 2,240 lbs. English.

8. For the purpose of this Contract the words *steamer or steamers* are intended to include any full powered primarily engine-driven vessel classed not lower than 100 A.1 or British Corporation R.S., or top classification in American, French, Italian, Norwegian or other equal Register, or ships not inferior to these classifications.

9. Sellers may ship the usual proportion in bags for stowage purposes, such bags to remain ships' and/or sellers' property.

10. In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.

11. Bill of Lading to be considered proof of date of shipment in the absence of evidence to the contrary. Each shipment appropriated in whole or part fulfilment of this Contract to be considered a separate Contract, but each Bill of Lading not to be considered a separate shipment except as to the date on which it can be appropriated. In the event of more than one shipment being made each shipment to be considered a separate Contract but the margin on the mean quantity sold not to be affected thereby.

12. Notice of Appropriation with ship's name, and date of Bill of Lading shall within seven days from date of Bill of Lading be telegraphed, cabled or radioed by the Shipper of the Soybeans tendered under this Contract direct to his Buyer or to the Seller's house or Representative or Agent in Europe and be passed on by his buyer or by the said European House, or Representative, or Agent and by each subsequent Seller, to his Buyer within the said seven days or in due course if received after that time; notice of appropriation received after the said seven days shall be passed on by telegram if Sellers and Buyers do not reside in the same country. All notices under this Clause shall be deemed to be under reserve for errors or delays in telegraphic, cable or radio transmission, and shippers cabled notice shall also be deemed to be under reserve for error in the date of Bill of Lading. On demand of Buyer, Seller shall give a copy of the particulars contained in the notice of appropriation received from his Seller, and Buyer shall, on demand, give Seller a written receipt of notice of appropriation. A valid notice of appropriation when once given shall not be withdrawn.

13. Freight Payable as provided in Bill of Lading &/or Charter Party.

14. Payment of full invoice amount by net cash in ...

A. In exchange for and on first presentation of first arriving set of shipping documents.

B. In exchange for shipping documents, on or before arrival of the ship at port of discharge, but if the ship shall not have arrived within ... days from date of Bill of Lading, payment, unless already made, to be made on or after the ... day from Bill of Lading date when required by Sellers.

Seller has the option of tendering delivery order (countersigned by Dealer, Shipbroker, Captain or Mate if so required) and Certificate and/or Letter of Insurance. If shipping documents have not been agreed at time of vessel's arrival at port of discharge, Seller must provide documents entitling Buyer to obtain delivery of the Soybeans from the vessel and payment must be made in exchange for same, such payment to be made without prejudice to Buyer's rights under the contract. No obviously clerical error in documents shall entitle the Buyer to reject them or delay payment but Seller shall be responsible for all loss or expense which such error may cause Buyer.

Should documents be presented with duplicate set of Bill or Bills of Lading attached, payment shall be made, provided the delivery of the remaining Bill or Bills of Lading in due course is guaranteed by Sellers.

Sellers shall not be responsible for delays in receipt of documents by Buyers, always provided that such delays are not caused by the default of Sellers. When payment is due on a Saturday, Sellers shall have the right to present documents on the preceding business day for payment after banking hours.

15. Sellers to supply Policy/ies and/or Certificate/s and/or Letter/s of Insurance effected with approved underwriters (for whose solvency Sellers are not responsible) on customary F.P.A. conditions for not less than two per cent. over the amount of the provisional invoice (but including any ocean freight prepaid or freight payable at destination), any amount over two per cent. to be for Seller's account. The original Marine Insurance shall extend to cover from the time of discharge while in the normal course of transit until delivered to the consignee's or other final warehouse at destination named in the Contract. When the port of destination is Hamburg the policy is to cover risk of craft on the aforementioned conditions to Harburg and/or Wilhelmsburg and/or Billwerder.

16. Seller shall insure goods against war risks on usual Lloyds conditions but Sellers' obligation in this respect shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment. The rate of insurance not to exceed the rate ruling in London on the date of Bill of Lading or date of steamer's sailing from each loading port for which Bill or Bills of Lading are issued, whichever may be adopted by Underwriters. Any War Risks premium in excess of one-half per cent. shall be payable by Buyers at time of payment and shall be advised to Buyers not later than time of appropriation or not later than three days after the rate has been agreed with Underwriters whichever may be the later.

17. Buyers to accept documents containing the White Star Deviation and/or the Chamber of Shipping Deviation Clause and/or any other recognised official War Deviation Clause.

18. The Assured is held covered against "loss or damage arising or resulting from act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship" for which the "carrier" or "ship" is relieved of responsibility under Article IV Section 2 of the Rules appended to the Water Carriage of Goods Act, 1936, of Canada, and/or Section 3 of the Act of Congress of the United States approved 13th February, 1893, and/or Section 4 Subsection 2 of the Carriage of Goods by Sea Act 1936, of the United States of America, but nothing in this clause contained shall limit or affect any rights which Underwriters may have by subrogation or otherwise, against the owners of the said vessel. Claims arising under this clause are not subject to the F.P.A. warranty.

19. The Beans to be worked immediately on arrival and discharged according to the custom of the port of discharge or as customary for liners if so provided in the Bill of Lading. If documents are tendered which do not provide for discharging as above or contain contrary stipulations as to discharge and/or demurrage, Seller to be responsible to Buyer for all extra expenses incurred thereby.

Any dues and/or taxes payable at destination in respect of the within-mentioned beans and/or carrying vessel by reason of having those beans on board to be for buyer's account. Import licences if required to be obtained by Buyers and all import dues and/or taxes to be for Buyer's account. Seller to furnish certificate of origin if required.

20. The whole shipment to be weighed at time of discharge; Seller and Buyer shall have the right of supervision both as to weighing and delivery.

21. Should any of the above-mentioned quantity form part of a larger quantity of the same or different period of shipment of similar quality, whether in bags or bulk, no separation or distinction shall be necessary.

All Loss collected, damages and sweepings, and any excess or deficiency in the quantity delivered, shall be shared by and apportioned *pro rata* between the various Receivers thereof buying under contracts containing this clause, and any of them receiving more or less than his *pro rata* share or appurtenance shall settle with the other or others of them for the same in cash at the market price of the day of vessel's arrival (such price to be fixed by arbitration unless mutually agreed). All Sellers and Buyers of any part of such larger quantity as aforesaid under contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all questions and claims between them or any of them in regard to such *pro rata* sharing or settlement as aforesaid in accordance with the arbitration rule enclosed herein.

Buyers and Buyers shall give all reasonable assistance in ascertaining the *pro rata*.

All Sellers shall be responsible for the settlement of the *pro rata* by their respective Buyers within reasonable time.

22. Any deficiency on Bill of Lading weight to be paid for by Seller, and any excess over Bill of Lading weight to be paid for by Buyer at contract price. No payment shall be made for increase in weight occasioned by water and/or oil during the voyage. In case of Sea Accident (pumping of Beans excepted) causing a deficiency on invoice weight, provisional invoice quantity to be final, except when such deficiency cannot be accounted for by the nature of the accident and is not recoverable from Underwriters.

23. Notice of Arbitration with name of Arbitrator, to be given by party claiming arbitration within 21 days of ships reporting. The other party to appoint his Arbitrator within 7 days from receipt of such notice. Intermediate Buyers and Sellers to pass all communications with 21 days of receipt. Arbitrators to exhaust all means deemed necessary and to call Arbitrators, or Umpire, agree to extend the time [illegible]

24. [illegible] of the goods or any part thereof to be proceeded at any time during the first ten days of guaranteed period of shipment, or at any time during the fourth and fifth decade's part or parts thereof, Shipper shall be entitled at the respective port or ports of loading to [illegible] contract period, which is to be not more than 24 days, by notice of default, or, if [illegible] or [illegible] part or parts of loading [illegible]

27. [illegible] party, whether an individual, firm, company, [illegible] shall [illegible] or shall intimate in writing that he or they [illegible] is or are unable to suspend payment of his or their debts or [illegible] a firm or a limited [illegible] or shall commit an act of bankruptcy, or, being a company shall [illegible] a petition (except in the case of a solvent company for the purpose of reconstruction or amalgamation) or, if a Receiver is appointed by the Court or by debenture holders, he or they shall be deemed to be and shall be treated as being in default and the other party shall after giving notice in writing to the party so deemed to be and treated as being in default as aforesaid, and notwithstanding any bankruptcy or liquidation, have the right to deal with the goods, as the case may be, against such party, and shall be entitled to claim or prove in bankruptcy or liquidation or otherwise, for the loss or shall account for the profit if any on a resale or purchase. If the party against whom such sale or purchase is made as aforesaid shall be dissatisfied with the price at which such sale or purchase is effected the above right is not exercised, this Contract shall be closed at the market price of the day on which default is deemed or treated as having taken place, such closing price shall be determined by arbitration if not agreed. The amount which the other party shall be entitled to claim or shall be liable to account for shall be the difference between the contract price and such closing price.

28. This Contract further agrees that, for the purpose of proceedings, either by or by arbitration, this Contract shall be deemed to have been made in England and to be performed there, any question of law in reference to the terms, the performance, the place of payment or otherwise notwithstanding, and the Courts of England or Arbitrators appointed in England, as the case may be, shall except for the purpose of enforcing any Award made in pursuance of the arbitration clause thereof, have exclusive jurisdiction over all disputes which may arise under this Contract. Such disputes shall be settled according to the law of England, whatever the domicile, residence or place of business of the parties to this Contract may be or become. Any party to this Contract residing or carrying on business in a foreign country shall, for the purpose of proceedings be considered as ordinarily resident or carrying on business at the Consulate in London of the country of his residence or place of business. Any party to this Contract residing or carrying on business either in Scotland or Northern Ireland, or any Colony or Dependency of the United Kingdom, shall for the purpose of such proceedings, be considered as ordinarily resident or carrying on business at the Office of The Incorporated Oil Seed Association, and being a party residing or carrying on business in Scotland shall hereby [illegible] personal jurisdiction as against him of, to the English Courts, and being a party residing or carrying on business in Northern Ireland shall be held to have submitted to the jurisdiction and to be bound by the decision of the English Courts. Service of proceedings upon a party residing or carrying on business in a foreign country by leaving the same at such Consulate and upon a party residing or carrying on business either in Scotland or Northern Ireland, or in any Colony or Dependency of the United Kingdom, and by leaving the same at the offices of The Incorporated Oil Seed Association, together with the postage, in a registered cover of a copy of such proceedings to the address abroad, or in Scotland or Northern Ireland or in any Colony or Dependency of the United Kingdom, of such party, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

29. All disputes from time to time arising out of this Contract including any question of Law appearing in the proceedings whether arising between the parties hereto, or between one of the parties hereto, and the Trustee in Bankruptcy of the other party, shall be referred to arbitration according to the Rules appended to this Contract, and this stipulation may be made a Rule of any of the divisions of Her Majesty's High Court of Justice in Northern Ireland on the application of either contracting party, for the purpose of enforcing an Award against a party residing or carrying on business in Northern Ireland. Neither Buyers, Sellers, Trustee in Bankruptcy, nor any other person claiming under either of them, shall bring any action against the other of them in respect of any such dispute until such dispute has been settled by the Arbitrators, Umpire, or Committee or Board of Appeal, as the case may be, and it is expressly agreed that the obtaining of an Award from either tribunal, as the case may be, shall be a condition precedent to the right of either contracting party to take any legal proceedings against the other in respect of any claim arising out of this Contract. All costs of or connected with the stating and argument of any Special Case for the opinion of the Court on any question of law arising in the course of the reference shall be borne and paid by the party requiring the same to be stated unless or except so far as otherwise determined by the Award to be made in the reference.

30. The Contract period for shipment, if such be 31 days or less shall, if desired by shipper, be extended by an additional period not exceeding eight days, provided he gives his Buyer notice by cable of his intention to claim additional days not later than the business day following the last day included in the originally stipulated period for shipment, such notice shall be passed on by other Sellers to their Buyers respectively in due course after receipt. Such notice must not state the number of additional days claimed by the Seller and the Seller may ship at any time within eight additional days. The Seller, however, shall make an allowance to the Buyer, to be deducted in the invoice from the Contract price, based on the number of days by which the originally stipulated period is exceeded, as follows:—

For 1, 2, 3 or 4 additional days, ¼% of the gross c.i.f. price.
For 5 or 6 additional days 1% of the gross c.i.f. price.
For 7 or 8 additional days, 1¼% of the gross c.i.f. price.

If, however, after having given notice to the Buyer as above, the Seller fails to make shipment within such eight days, then the Contract shall be deemed to have called for shipment during the originally stipulated period plus eight days, at contract price less 1¼% and any settlement for default shall be calculated on that basis.

31. A notice and/or tender to the Broker or Agent shall be deemed a notice and/or tender under this Contract.

1928. 32. Any reference to the giving or passing on of notices by cable or telegraph shall include the giving or passing on thereof by cablegram, telegram, teleprinter, telex or similar method of rapid written communication.

33. The word days means running days unless otherwise stated.

34. Should the time limited for doing any act or giving any notice expire on a Sunday, Saturday or any Public Holiday or on any day which The Incorporated Oil Seed Association shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter except as provided in the Payment Clause.

*Signature*_____

RULES—ARBITRATION.

Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator, who shall be a member of the [illegible] a member of a [illegible] firm, or a member of a company represented by a member, and such arbitrators shall have the power if and when they deem to appoint an umpire, [illegible] a member of the Association, or a partner in a members firm, or a director of a company represented by a member, who may [illegible] to be [illegible]. No person having a direct [illegible] matter in dispute shall be appointed to act as arbitrator or umpire except in disputes with regard to quality when both parties to the dispute give written agreement thereto [illegible] as hereinafter [illegible].

The arbitration fee is to be paid by the party against whom the decision is given, except when allowances are fixed by arbitration on country damaged or on seed damaged by cyprus, in such cases the fee to be equally divided, also in other cases, where, in the opinion of the referees they should be so treated.

If in the event of one of the parties failing to appoint an arbitrator, or neglecting or refusing to do so for seven days after notice in writing of such an appointment by the other (such notice [illegible] personally or left at the usual place of business of the party so omitting to appoint), or in case the arbitrators shall not within seven days after their appointment agree to [illegible] appoint an umpire, or in case after the appointment of such arbitrators or umpire they or any of them shall refuse or neglect to act, or become incapable of acting, and [illegible] parties with whom they or his appointment relating to [illegible] shall not appoint a substitute within the [illegible] days after notice of such death or refusal, or incapacity, then upon [illegible] by either of the disputing parties, and provided the arbitrators of the same three parts to the Secretary of The Incorporated Oil Seed Association, the sum of £5 0s., the [illegible] a Committee shall appoint an arbitrator or arbitrators, or umpire, who shall be members or a member of the Association, to fill the vacancy or vacancies as aforesaid.

Awards by arbitrators or an umpire shall be in writing on an official form issued by the Secretary of the Association and the arbitrators or umpire shall have the power to [illegible] and required with Law references, and may award the same as a Rent charge if they or he shall think fit.

Either party shall be dissatisfied with the Award they shall have a right of appeal to the Committee of Appeal of The Incorporated Oil Seed Association providing a [illegible] with the Secretary of the Association not later than noon on the 30th consecutive day after the date of the Award and provided also that the Appellant at the same time [illegible] an Appeal fee of £2 2s. Od. Unless the Appellant is a Member or a firm represented by the Membership of the Association in which case the fee shall be £5. [illegible] shall be determined by a Board of Appeal consisting of four members of the Committee of Appeal of the Association, to necessitate with the Regulations of Association [illegible] of the Incorporated Oil Seed Association, and the Council of the Executive Committee for the time being.

No member of the Committee of Appeal who has an [illegible] or [illegible] in the matter in dispute shall be appointed to act on the Board of Appeal dealing with such matter, and no member of the arbitrators or the umpire shall [illegible] by reason of the appointment of members of the Board of Appeal or shall be appointed a member of the Board of Appeal.

[illegible] the umpire shall have acted in the capacity of [illegible] a panel but any member of the same firm or company by which either of the arbitrators or the [illegible] appointed to vote for the election of a Board of Appeal or be eligible for appointment on a Board of Appeal dealing with questions arising on the remainder of the [illegible] relating to a dispute as to quality when [illegible] one sample and no [illegible] representing the entire quantity available [illegible] as to questions other [illegible] of the questions relating to [illegible] of [illegible] relating to the case in which they have already acted as arbitrators or umpire; [illegible] as to these Rules herein [illegible], any Member on a Board of Appeal which has dealt with the case shall be [illegible] to vote or serve on a Board of Appeal dealing with a subsequent case arising on the [illegible] parcel.

[illegible] arbitration or an appeal to the Committee of Appeal shall not be represented or appear by Counsel or Solicitor as the hearing of such arbitration or appeal [illegible] decision of the arbitrators, or umpire, as the case may be, or Board of Appeal, the case is of special importance or questions of law are likely to arise upon which the [illegible] Board of Appeal may be required.

[illegible] of Appeal shall [illegible] the Board of appeal from whom not less than three of the members of the Board of Appeal dealing with such Award. The Board of Appeal [illegible] and expenses of the Appeal [illegible] the appeal fee of £2 2s. [illegible] to the appellant if three of the members of the Board of Appeal shall direct.

The Board of Appeal shall have the power to vary or set aside the award in addition to the power to vary in any other manner by increasing. If the Board so act, the liability of the [illegible] of Appeal shall be [illegible] or varied by them and shall be enforced by them as if the Board of Appeal were [illegible] by the Secretary [illegible] shall be deemed to be the award of the Board of Appeal and of the Committee of Appeal and shall be final and binding on all parties.

[illegible] shall have the right at any time before the Appeal is heard to withdraw his appeal on payment of such costs, if any, as the Committee of [illegible] shall direct. No appeal may be lodged for the [illegible] of [illegible] after the time fixed for the meeting of the Committee of [illegible] has been lodged and received by [illegible] the time fixed for the meeting of the Board of Appeal [illegible], but on any [illegible] with any part of the [illegible] Where an appeal is abandoned and withdrawn [illegible] has been lodged by the Secretary the whole of the Appeal fee shall be returned.

[illegible] by the Board of Appeal as to their reasons for their decision be required to appeal beyond the same allowed thereto by the Executive Committee out of [illegible] Special Case should be [illegible] for the opinion of the Court.

[illegible] Special Case be decided for the Board shall notify the [illegible] date from the appointment day to the Arbitrators or umpire, or [illegible] Board of Appeal [illegible] appointed with the [illegible] thereof the sum of £10 to each party as the arbitrators, umpire, Committee or Board of Appeal may from time to [illegible] to the Award or such further sum or sums as they, the arbitrators, umpire, Committee or Board of Appeal may from time to [illegible] [illegible] [illegible]

COOK INDUSTRIES, INC.

106a

GRAIN DIVISION

CONTRACT NUMBER	SALE DATE	YOUR NUMBER	INVOICE DATE	INVOICE NUMBER
SB-133065	11 19 71		JAN.6, 1972	CG-7525

COPIES OF PAPERS ATTACHED

TRIP. INVOICE	CLEAN ON BOARD B/L	NON-NEG. B/L	CERTIFICATES INSP.	CERTIFICATES WGT.	CERTIFICATES INSURANCE
4	3	2	3	3	(C&F)

CHINA TRADE & DEVELOPMENT CORP.
3rd FLOOR, 59, KWAN CHIEN RD.
TAIPEI
O/B
SHUI FA OIL MILL CO. LTD.

(COPIES) OTHER PAPERS

Phytosanitary Certificate/triplicate
Certificate of Origin/Triplicate

SHIPPED PER	B/L DATE	SHIPPED FROM	DESTINATION
NORMA	1-05-72	RESERVE, LOUISIANA	KAOHSIUNG

EIGHT PREPAID/~~COLLECT~~ ANTITY:	BUSHELS	POUNDS	LONG TONS	METRIC TONS	EXTENSION
	36,745/24	2,204,724	984.2520	1000.000	PAY LAST AMOUNT IN THIS COLUMN ⬇

ALITY: COVERING

1,000 METRIC TONS (OF 1,947.75) MT OF US YELLOW SOYBEAN
US GRADE NO.2 OR BETTER IN BULK AT US$127.65 PER M/T C&F FO

ICE & BASIS: KAOHSIUNG

IMPORT LICENSE NO. 6054-2212

TAIPEI BRANCH
Bank of America

COVERING SHIPMENT OF:

1,000 METRIC TONS @ US $ 127.65 PER M/T $ 127,650.00

YMENT SPECIFICATIONS By drafts at 180 days sight/and at sight, as outlined by letter of credit (discount charges & acceptance commission for buyers account) DRAWN UNDER B OF A CREDIT NO. 6062/359030
ADVISED THROUGH BANK OF AMERICA
CHICAGO, ILLINOIS UNDER CREDIT
No.E-11301

CUMENTS TO:

BANK OF AMERICA
41 BROAD STREET
NEW YORK, NEW YORK

[illegible] of the United States,
[illegible] Republic,
[illegible] Free and Free,
[illegible] Cuba, except as authorized by the U. S.

COOK INDUSTRIES, INC.
GRAIN DIVISION

AUTHORIZED SIGNATURE AS REQUIRED

...BERTH GRAIN CHARTER PARTY—STEAMER

C-1981-4

107a

New York, December 16, 19 71

It is this day Mutually Agreed, BETWEEN AUSTIN NAVIGATION CORPORATION, LTD., Monrovia, Liberian Flag Steamship "NORMA", single-deck, self trimming bulkcarrier, cargo to be loaded in bulk only

Liberia, owners of the Steamship

of 28992 S.R.T. built 1949 at of 12027

net tons register, or thereabouts, and classed Highest in Lloyds or equiv.

and COOK INDUSTRIES, INC. Charterers.

That the said Steamship being tight, staunch and strong, and in every way fitted for the voyage, with liberty to take outward cargo to 1/2 safe berths, 1 safe port U.S. GULF, excluding Brownsville, with New Orleans/Destrehan/Amc/Myrtle Grove/Reserve counting as one port

for owners' benefit, shall with all convenient speed sail and proceed to

and there load, always afloat, from said Charterers, or their agents, a full and complete cargo, subject to limits above guaranteed, of WHEAT and INDIAN CORN, and/or RYE and/or OATS. 14,000 metric tons, 5% more or less, quantity at Owners' option, SOYBEANS in bulk, to be naturally separated by holds from any other cargo.

1/2 safe berths, 1 safe port FORMOSA

having been

SEVEN DOLLARS AND SEVENTY FIVE CENTS (£7.75) per ton of 2240 lbs.

Freight to be full and clear of all Taxes, Duties, Charges and Expenses on Cargo, Vessel and/or Freight, and paid in New York, in U.S. Currency, on surrender of signed Ocean Bills of Lading, discountless and non-returnable, vessel and/or cargo lost or not lost.

or their agents.

Time for loading, if required by Charterers, not to commence before the 22nd day of December 71

Should the Steamer not be passed by Board of Underwriters' Surveyor as ready for cargo at her Loading Port before 12 o'clock noon on the 31st day of December 19 71, followed by the presentation of said Surveyor's pass to the Charterers or their agents at their office before said hour, the Charterers or their agents shall at said hour and/or any time after but not later than the presentation of the surveyor's pass at said office have the option of cancelling this Charter Party.

It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control by the perils of the seas or of waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people, by explosion, by accident to the steamer, her machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, mariner, engineer or other servants of the shipowner, excepting, however, only those resulting from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager.

2. General Average shall be payable according to York/Antwerp Rules 1950 in lawful money of the United States of America, at such port or place in the United States as may be selected by the carrier, and as to such proportion of the cargo as may be carried on deck, and which has been reported as lost or not lost, shall contribute in general average and salvage as fully as if stowed under deck. General average shall be payable as to any loss not recovered by the insurers, and the Average Adjusters are hereby authorized to call for such deposits as they may deem sufficient as well as to require delivery of bills of lading before the release of cargo, as a condition precedent to the right of consignees to receive delivery. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the carrier is not responsible by statute, contract or otherwise, the goods and the shipper, consignee or owner of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect as to the same extent as if such sacrifice, loss, expense, damage or disaster had not resulted from or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect in the steamer, her machinery or appurtenances.

It is also mutually agreed that this contract is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc."

3. Cargo to be received and delivered as fast as vessel can receive and deliver during ordinary working hours, any custom of the port to the contrary notwithstanding, but receivers of the cargo are not obliged to take delivery at night without their consent, and in any event the steamer must bear all extra expenses incurred by working at night.

4. In the event of the vessel being ordered to discharge in Scandinavia, The Sound, Baltic or Gulf of Finland, or, if ordered inside Gibraltar, Steamer to have the privilege of proceeding on same.

5. Vessel to have a lien on the cargo for all freight, dead freight, demurrage, average, for freight, deadfreight and demurrage Charterers' liability under this Charter to cease on cargo being shipped.

The said Charterers, or their agents, are to have the privilege of transferring this Charter to others guaranteeing to the ship owner the due fulfillment of this Charter.

Cash for Vessel's ordinary disbursements at Port of Loading to be advanced by Charterers, if required by Master, at current rate of exchange, subject to 1% interest and two and a half percent commission on 1-1/4% is due and payable on vessel's arrival at

A commission of and the customary freight brokerage is due on signing of this Charter Party to BRACE-FORBES, INC., on gross freight, dead freight and demurrage. Vessel not or not lost, whose agents at port of loading are to attend to ship's business on an "owner" basis.

Penalty for non performance of this agreement, estimated amount of freight. and 1-1/4% Address Commission to Charterers.

If the steamer loads at a port in the Gulf, owners to have privilege of coaling at Norfolk or Newport News.

THIS CHARTERPARTY INCLUDES CLAUSES NOS. 7 THROUGH 22 INCLUSIVE, AS ATTACHED, WHICH ARE TO BE CONSIDERED AS FULLY INCORPORATED HEREIN.

COOK INDUSTRIES, INC.

BY

EDDIE'S SHIPPING AGENCY, INC.
FOR & ON BEHALF OF OWNERS
AS PER LETTER OF AUTHORITY - AS AGENTS

BY

WE HEREBY CERTIFY, That this is a true and correct copy of the original Charter Party in all its terms. - CHAIRMAN

FILE "SPACESHIP" "BABYLON"

WESTERN UNION TELEX 96-1490
TELEPHONES N. Y. CITY 212-895-6470
OUT-OF-TOWN 516-669-3900

108a

SPACEBROKERS. INC.
STEAMSHIP AND CARGO BROKERS
400 WEST MAIN STREET - P. O. BOX 518
BABYLON, N. Y. 11702

February 24, 1972

Addendum No. 1

m.s. "NORMA"
C/P dated 12/16/71 - Contract No.C-1881

A. With reference to Charterparty dated New York, December 16, 1971, between AUSTIN NAVIGATION CORPORATION LTD., Monrovia, Liberia, Owners, and COOK INDUSTRIES, INC., Charterers, it is this day mutually agreed as follows:

1. Clause 10 of the subject Charterparty is hereby amended to read: "Vessel to be discharged with customary quick despatch" instead of 1500 Metrics, free discharge. Accordingly, there will be no demurrage/despatch at discharge port.

B. All other terms and conditions of this C/P unchanged.

COOK INDUSTRIES, INC.

BY: John L Jackson

EDDIE'S SHIPPING AGENCY, INC.
FOR & ON BEHALF OF OWNERS
AS PER LETTER AUTHORITY

BY: W. H. EDDIE HSU - CHAIRMAN
AS AGENTS

SPACEBROKERS, INC.

s.s. "KOREA", Charterparty dated December 16, 1971, Contract No. C-1881

7. Owners have the option to complete with cargo to Japan or Korea but if required by Charterers Formosa to be first port of discharge.

8. Owners guarantee that this vessel has not called at a Cuban or North Vietnam port since January 1, 1963 and presently has no commitment to call at a Cuban or North Vietnam port subsequent to this voyage.

9. Cargo to be loaded according to berth terms with customary berth despatch within a total of five (5) weather working days of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charterers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per day or pro ra for part of a day provided such detention shall occur by default of Charterers or their agents. If sooner loaded, Owners to pay Charterers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved in loading.

10. Cargo to be discharged by Receivers' stevedores free of risk and expense to th vessel at the average rate of 1500 Metric Tons per ~~weather working~~ day of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charter Receivers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per running day or pro rata for part of a day for all time used in excess of allowed laytime. If sooner despatched, Owners to pay Charterers/ Receivers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved. Owners guarantee three (3) hatches available continuously for discharge. Owners guarantee to provide eight (8) vacuvators and provide power and labor to operate them at Owners' expense, if required. Owners further guarantee tha vacuvators will discharge at a Minimum rate of 25 Metric Tons per hour per vacuvator.

11. Laydays are not reversible.

12. Overtime to be for account of party ordering same. Officers' and crew's overtime always to be for Owners' account.

13. Lighterage, if any at discharge port, to be at Owners' risk and expense and t

14. At discharge port, vessel to open and close hatches at vessel's time and expense.

15. Shifting between loading berths and between discharging berths to be for vessel's account and time used to count as laytime.

16. Vessel to be left in safe, seaworthy trim for shifting between loading berths and/or between discharging berths to Master's satisfaction.

17. Owners' agents to be employed at loading and discharging ports.

18. Any extra insurance on cargo due to vessel's ownership, age, flag or classification to be for Owners' account.

SPACEBROKERS, I..C.
M.V. "FORMA", Charterparty dated December 16, 1971, Contract No. C-1881

). 1. Notwithstanding any custom of the port to the contrary, Saturday shall not count as laytime at loading and discharging port or ports where stevedoring labor and/or grain handling facilities are unavailable on Saturday or availabl only at overtime and/or premium rates,
2. In ports where only part of Saturday is affected by such conditions as described under "1" above, laytime shall count until expiration of the last straight time period.
3. Where six or more hours of work are performed at normal rates, Saturday shall count as a full layday."

). At loading port notification of the vessel's readiness must be delivered at th office of the Charterers or their agents at or before 4 p.m. (or at or before 12 noon if on Saturday) vessel also having been entered at the Custom House accompanied by pass of the National Cargo Bureau Inspector of vessel's readiness in all compartments and with USDA Weevil Free Certificate and the laydays will then commence at 7 a.m. on the next business day whether in berth or not. At discharge port, notification of the vessel's readiness to discharge must be delivered at the office of the Receivers or their agents at or before 4 p.m (or at or before 12 noon if on Saturday) vessel also having been entered at the Custom House and the laydays will then commence at 7 a.m. on the next business day whether in berth or not.
Notice of readiness at port or ports of load and discharge is only to be tendered on official business days during office hours but not after 4 p.m. an during office hours on Saturday but not after 12 noon and is not acceptable on Sundays and holidays.

. Owners guarantee vessel's draft will not exceed 31' salt water on arrival Formosa.

. The following clauses, as attached, are to be considered as fully incorporated herein: U.S. Clause Paramount, New Jason Clause, New Both to Blame Collision Clause, P & I Bunker Deviation Clause, Chamber of Shipping War Risk Clauses 1 and 2, New York Produce Exchange Arbitration Clause, Amended Centrocon Strik Clause.

U.S. CARRIAGE PARAM. : This Bill of Lading shall have effect subje. to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

BOTH JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay, salvage and special charges incurred in respect of the goods.
If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE: If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."
The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

P. AND I. DIRECT DEVIATION CLAUSE: The vessel, in addition to all other liberties, shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever, whether such ports are on or off the direct or customary route or routes, to the ports of loading or discharge named in this Charter, and there take oil bunkers in any quantity in the discretion of owners, even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried, whether such amount is or is not required for the chartered voyage.

WAR RISK CLAUSE: (1) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on sl.. on Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered. (2) The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly. C.S.U.K., London - 26th September 1935.

NEW YORK ARBITRATION CLAUSE: Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

AVERMED CONTRACTION STRIKES CLAUSE: If the Cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the Cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or a Strike or Lock-out on the Railways, or in the Docks, or other loading places, or if the Cargo cannot be discharged by reason of Riots, Civil Commotions, or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes provided that a Strike or Lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out. In case of any delay by reason of the before-named causes, no claim for damages or demurrage, shall be made by the Charterers, Receivers .. the Cargo, or Owners of the Steamer. For the purposes however, of settling despatch money accounts any time lost by the steamer through any of the above causes shall be counted as time used in loading or discharging as the case may be.

SCHEDULE "A"

B/L						
7	1,000	M/T	No. 2 yellow soybeans			Shui Fa Oil Mill Co. Ltd.
8	947.720	"	"	"	"	" " " " " "
4	400	"	"	"	"	Huey Feng Oil Mill Co. Ltd.
5	440	"	"	"	"	" " " " " "
11	707.250	"	"	"	"	Hui Shung Solvent Oil Co.
6	600	"	"	"	"	" " " " "
12	225	"	"	"	"	Haie Cheng Oil Mill Corp.
13	300	"	"	"	"	" " " " "
15	1,675	"	"	"	"	Heng Lung Oil Mill Co. Ltd.
14	2,000	"	"	"	"	" " " " "
16	1,300	"	"	"	"	Yuan Yi Oil Industry Co. Ltd.
17	1,365	"	"	"	"	" " " " "
9	1,215	"	"	"	"	King Tai Ih Oil Factory Co. Ltd.
10	1,200	"	"	"	"	" " " " "
1	565	"	"	"	"	King Tai Yi Trading Co. Ltd.
2	400	"	"	"	"	" " " " "
2	400	"	"	"	"	" " " " "

1128

BALTIMORE FORM C

113a

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by

on board the good steamship or motor vessel, called the

now lying in the port of and bound for KAOHSIUNG, TAIWAN

viz:

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS ABOVE

(the dangers of the Seas only excepted), unto ORDER OF BANK OF AMERICA NTASA, TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of

QUANTITY, DESCRIPTION AND STOWAGE	FREIGHT PREPAID

MARKS AND NOS. 1,3,5

NOTIFY BANK OF AMERICA NTASA, TAIPEI AND CHINA TRADE & DEVELOPMENT CORP. 2FL, NO. 65, KUEI CHIEN RD., TAIPEI

ALL TERMS CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED DECEMBER 16, 1977

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY WRITTEN, ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraint of Princes, rulers or people by seizure, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager).

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, also sufficient security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the owners or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of sacrifices, loss or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

(See over)

In Witness Whereof, the Master or Agent of said vessel hath affirmed to Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

SHIPPING CO. AS AGENTS

Dated at

Set No AS THE MASTER

114a

M/S NORMA

Holds Nos. 1,3,5.

3,300,489 POUNDS

61,137/30/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
GRAIN WEIGHTMASTER

[signature]
AUTHORIZED WEIGHER

COPY—NOT NEGOTIABLE

EX. D-7 EXHIBIT 6A

NEW ORLEANS BOARD OF TRADE

EXPORT

OFFICIAL WEIGHT CERTIFICATE No. 619-2

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-30-71

LOCATION BAYSIDE ELEVATOR CO.
A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder in effect on the above date I personally witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL M/S NORMA

TO WAY Holds Nos. 1,3,5.

3,300,489 POUNDS

61,137/30/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
GRAIN WEIGHTMASTER

[signature]
AUTHORIZED WEIGHER

COPY—NOT NEGOTIABLE

EX D-8

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	DAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, in which grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

1,331,969 POUNDS

20,038/09/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EXHIBIT 6B

EXHIBIT 6C

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-4

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	DAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, in which grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

4,294,232 POUNDS

71,570/32/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EXHIBIT 6D

[illegible]

[illegible]

[illegible] Soybeans

[illegible] S/1 YELLOW

[illegible] Holds Nos. 1,2,3.

2,201,125 POUNDS

40,035/33/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel R. Willis
[illegible] WAREHOUSEMAN

[illegible] AUTHORIZED WAREHOUSEMAN

COPY—NOT NEGOTIABLE

EX. P-5 EXHIBIT 6E

[illegible]

DESTREHAN BOARD OF TRADE

[illegible] OFFICIAL WEIGHT CERTIFICATE No. 619-6

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

[illegible]	[illegible]
1-12-72	DAVIDE ELEVATOR CO. A Division of Davide Warehouse Co. — Reserve, Louisiana

[illegible] Soybeans

[illegible] S/1 YELLOW

[illegible] Holds Nos. 1,2,3.

1,102,420 POUNDS

[illegible] BUSHELS

[illegible] Cook Industries, Inc.

[illegible]

[illegible] AUTHORIZED WAREHOUSEMAN

[illegible] COPY — NOT NEGOTIABLE

EX P-6

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DAVISE ELEVATOR CO.

A Division of Imperial Warehouse Co. — Reserve, Louisiana

KIND OF GRAIN Soybeans

GRADE U.S. NO. 2

STORAGE Holds Nos. 1,2,3.

2,111,262 POUNDS

103,039/22/30 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
GRAIN WEIGHMASTER

W. J. Davis
CHECKED WEIGHER

COPY — NOT NEGOTIABLE

EX D-7 EXHIBIT 6G

DISTRICT BOARD OF TRADE

OFFICIAL WEIGHT CERTIFICATE No. 613-8

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-20-71 LOCATION DAVISE ELEVATOR CO.
A Division of Imperial Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for said warehouse thereunder, which license is in full force and effect. I personally examined and inspected the weighing of the following lot of grain at the above warehouse, and I certify that the said grain was weighed under said Act and regulations, and that the net weight, including dockage, of the said grain delivered as the following vessel is that stated herein:

KIND OF GRAIN Soybeans

GRADE U.S. NO. 2

STORAGE Holds Nos. 1,2,3.

2,737,502 POUNDS

133,658/22/30 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
GRAIN WEIGHMASTER

W. J. Davis
CHECKED WEIGHER

COPY — NOT NEGOTIABLE

EX D-8

- X

[illegible] CO. [illegible],

[illegible],

Plaintiffs,

-against-

M/V "[illegible]", her engines, etc.,

-and-

ARTHUR HAVIGHORST CORP. LTD.,

Defendant and
Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250
(JES)

AFFIDAVIT

- X

STATE OF LOUISIANA)
: ss.:
PARISH OF ST. JOHN THE BAPTIST)

EARL M. HIBBS, being duly sworn deposes and says:

1. That he is the Chief Weighmaster of the Destrehan Board of Trade, a non-profit, official inspection agency licensed by the United States Department of Agriculture to certify quantity and quality of bulk grain cargo for export and domestic shipments from the port of Reserve, Louisiana, and that he makes this affidavit based upon personal knowledge.

2. I have been a licensed weighor for the past 15 years and am now employed as chief weighmaster of the Destrehan Board of Trade.

3. [illegible]

on January 4th and 5th, 1972, I personally supervised the weight certification of the loading from grain elevators and can state that an official licensed weigher of Destrehan was at all times on hand to ensure the correctness of the weight certifications.

4. The scales used in weighing the cargo as discharged from the elevators had at that time been certified by both the State of Louisiana and various other private concerns as accurate within acceptable limits for weighing bulk grain.

5. It is my personal belief that the weight certificates for soybean cargo loaded aboard the M.V. Roma dated January 5, 1972 and numbered 619-1 through 619-3 inclusive, accurately reflect the true amount of grain loaded aboard that vessel.

Daniel A. Willis

Sworn to before me
this day of January, 1974.

Notary Public

Survey Report 國際公證有限公司 120a

International Surveyor Co.

台北市延平北路一段八十巷十六號三樓
3rd Floor, 16, Lane 80, Yen Ping
North, Taipei, Taiwan
TEL 27508

This report is issued to you without liability on our part of our knowledge and ability but without responsibility on our part.

No. ISC-72-114

Date April 22nd 1972

COMMODITY: No.2 Yellow Soybeans in bulk.

CONSIGNEE & QUANTITY:

Shui Fa Oil Mill Co., Ltd.	1,947.750	M/Tons.
Huey Feng Oil Mill Co., Ltd.	840.000	"
Hui Shung Solvent Oil Co., Ltd.	1,307.250	"
Hsie Cheng Oil Mill Corp.	525.000	"
Heng Lung Oil Mill Co., Ltd.	3,675.000	"
Yuan Yi Oil Industry Co., Ltd.	2,625.000	"
King Tai Ih Oil Factory Co., Ltd.	2,415.000	"
King Tai Yi Trading Co., Ltd.	1,365.000	"
Total:	14,700.000	M/Tons.

UNDERWRITERS: South China Insurance Co., Ltd. Taipei

CARRIER: ex s.s. "NORMA" arrived at Kaohsiung on March 28th 1972 from New Orleans.

ORIGINAL

THIS IS TO CERTIFY that we, the undersigned Cargo Surveyors, at the request of Messrs. South China Insurance Co., Ltd., Taipei, did proceed at Wharf No. 32 & 34, Kaohsiung Chung Kang and on board the m.v. "NORMA" from the days March 28th through April 11th 1972 for the purpose of inspection, supervise discharging, bagging, tallying and 100% weighing of the above-mentioned cargo. Hereby we report as follows:-

DRAFT SURVEY: Draft reading was effected by us with the Chief Officer of M.V."NORMA" before and on completion of discharging. The draft reading report was attached hereunder for your reference.

STOWAGE: The Soybeans in bulk was stowed in the vessel's holds Nos. 1, 3 and 5.

CONDITION:
1. Upon openning the hatches, we found that the mildewed beans in Hatch No.3 was caused to leaked with sea water from hatch cover, so the 311 bags(or 24.880 M/T) of mildewed beans were found during discharging.
2. Hatch Nos. 1 & 5 were found to be in apparent good condition.
3. We enclosed herewith one sheet of Damage Report is signed by Chief Officer of the m.v. "NORMA".

DISCHARGING: The Soybeans in bulk were discharged by means of Grab-Bucket Machine. The bulky cargo stowed in three holds of the vessel were respectively grabbed with Grab-Bucket and discharged, then bagged on the quay.

Commenced at 1530 hrs. March 28th 1972.
Completed at 0730 hrs. April 15th 1972.

- - - to be continued - - -

Survey Report 國際公證有限公司

International Surveyor Co.

6-1 Floor, 12, Lane 80, Hsin Kow
Street, Taipei, Taiwan
TEL 27306

This report is issued in good faith and to the best of our knowledge and ability, but without responsibility on our part.

No. ISC-72-114 Page 2.

Date April 22nd 1972

WEIGHING: 100% weighing was effected by us at the captioned time and place. Each and every bag was tested and well-balanced with platform scale which were constantly tested for accuracy during the weighing. A uniform net weight of 80.0 kgs. of Soybeans in bulk were bagged and weighed. The quantity is specified as follows:

Godown No.	Description	No. of Bags	Net Weight
31-2	Sound beans.	98,681 Bags.	7,894.4800 M/T.
	Mildewed beans.	301 "	24.0800 "
	Husks of Soybeans(No uniform of net weight per bag).	161 "	9.6106 "
32-2	Sound beans.	28,340 "	2,267.2000 "
34	Sound beans.	36,865 "	2,949.2800 "
	Mildewed beans.	10 "	0.8000 "
	Husks of Soybeans(No uniform of net weight per bag).	6 "	0.3194 "
Truck	Sound beans.	16,250 "	1,300.0000 "
	Total:	180,618 Bags.	14,443.7700 M/T.

COMPARISON: a. By Weighing:

Total B/L quantity: 14,700.000 M/T.
Total Received Soybeans: 14,445.770 "
Short-delivered weight: 254.230 M/T

b. By Draft Reading:

Total B/L quantity: 14,700.000 M/T.
Total Discharged by Draft Reading: 14,504.280 "
Shortage in weight: 195.720 M/T.

c. Total Quantity Discharged by Vessel's Draft: 14,504.280 M/T.
Total Quantity Discharged by Weighing: 14,445.770 "
Difference: 58.510 M/T

ORIGINAL

APPORTIONMENT: Unit - M/T.

Policy No.	Consignee	B/L Q'ty	Sound Beans	Mildewed Beans	Husks of Beans	Shortage
MN71/34631	Shui Fu	1,947.750	1,939.452	3.297	1.315	33.686
MN71/34632	Huey Feng	840.000	825.496	1.317	0.568	14.527
MN71/34633	Hui Shung	1,307.250	1,281.546	2.213	0.883	22.608
MN71/34634	Hsie Cheng	525.000	514.676	0.889	0.355	9.080
MN71/34635	Heng Lung	3,675.000	3,602.739	6.221	2.482	63.538
MN71/34636	Yuan Yi	2,625.000	2,573.385	4.443	1.774	45.398
MN71/34637	King Tai Ih (Oil Factory)	2,415.000	2,367.515	4.088	1.631	41.766
MN71/34638	King Tai Yi (Trading Co.)	1,365.000	1,338.159	2.312	0.922	23.607
	Total:	14,700.000	14,443.970	24.880	9.930	254.230

* Ratio of Shortage: 1.72943%.

* * * THE END * * *

INTERNATIONAL SURVEYOR CO.

122a

Date: _____

DRAFT READING REPORT

APPLICANT: Ning Tai Yi Trading Co., Ltd. NAME OF VESSEL: [illegible]

COMMODITY: [illegible] in bulk VOY. NO.: _____ FLAG: Liberian

B/L QUANTITY: 14,710 [illegible] tons ARRIVED ON: March 5th'7 FROM New Orleans

PORT OF SURVEY: [illegible] SAILING ON: _____ TO _____

	BEFORE DISCHARGE/LOADING	AFTER DISCHARGE/LOADING
Date:	March 28th	April 14th
Density of sea water:	1022	1022
Draft: Fore:	33' 5".5	7' 6"
Aft.:	33' 6".5	23' 6"
Mean:	33' 6"	15' 6"
Mid-ship: port side.	33' 11"	15' 3"
" " : starboard.	32' 7"	14' 9"
Mean:	33' 3"	15' 0"
Mean of Means:	33' 4".5	15' 3"
Mean Draft corrected:	33' 3".75	15' 1".5
Displacement/Dead weight:	36,000 L/Tons.	15,493 L/Tons.
Correction for Density:	- 108 L/Tons.	- 46 L/Tons.
" for Stem/Trim:	/Tons.	/Tons.
Corrected Displacement/Dead weight:	35,892 L/Tons.(A)	15,447 L/Tons(B)
Non-Cargo Weight on board:		
Fuel Oil:	210 L/Tons.	210 L/Tons.
Fresh Water:	140 L/Tons.	600 L/Tons.
Boiler Water:	/Tons.	/Tons.
Ballast Water:	/Tons.	5,535 L/Tons.
Others: [illegible] in bulk	12,164.33/Tons.	[illegible] L/Tons.
Total:	12,514.336/Tons.(a)	6,345 L/Tons.(b)

SUBJECT CARGO DISCHARGE/LOADING: 14,279.164 L/Tons or _____ M/Tons.

(Based on the ship's scales provided on board)

[illegible] International Surveyors Ltd.

[illegible]

Chief Officer

[illegible]

Surveyor

INTERNATIONAL SURVEYOR CO., LTD.

DAMAGE REPORT

Date: April 15, 1972.

Re: M.V. " HOTA " carried 24,720.060 M/T
of Yellow Soybeans in bulk from New
Orleans U.S.A., at March 23, 1972
berthed at Pier No. 32, Kaohsiung Harbour.

Description of Goods	Quantity	Net Weight
Mildewed Soybeans	311 bags. @ 80 kgs.	24,880 kgs.
Total:	311 bags. @ 80 kgs. vvvvvvvv	24,880 kgs. vvvvvvvvv

INSPECTION: The Mildewed Soybeans that found by us after open hatch cover at hatch No. 3 and we found Mildewed Soybeans due cause by hatch cover was leakage.

" HOTA "

INTERNATIONAL SURVEYOR CO.

TEL 52579

.....
Chief Mate.

.....
Surveyor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[illegible] CO., LTD., et al., Plaintiffs, -against- M/S "[illegible]", her engines, etc., -and against- EASTERN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES INC., Third-Party Defendant.	73 Civ. 250 (CES)

PLAINTIFFS ANSWERS TO INTERROGATORIES

Plaintiffs answering interrogatories propounded by defendant and third-party plaintiff, state:

1. For the three year period immediately prior to the voyage in suit, the following are shipments of No. 2 yellow soybeans plaintiffs imported from the United States:

a. S.S. "[illegible]" arrived at Kaohsiung on March 28th, 1970

Shipment: During Jan. 16-31, 1970

Discharged Quantity: 14,268.400 M/T

B/L Quantity: 14,151.290 M/T

Shortage: 12.390 M/T

Percentage of Loss: 0.0859%

[illegible] arrived at Kaohsiung May 5, 1970

Shipment: During March 5-20, 1970

B/L Quantity: 14,405.224 M/T

Discharged Quantity: 14,372.800 M/T

Shortage: 32.424 M/T

Percentage of Loss: 0.225%

c. M.V. "TRAMIR" arrived at Kaohsiung on July 11, 1970

Shipment: During May 1-30, 1970

B/L Quantity: 13,775.000 M/T

Discharged Quantity: 13,550.160 M/T

Shortage: 224.840 M/T

Percentage of Loss: 1.63223%

d. M.V. "ISLAND SKIPPER" arrived at Kaohsiung on Aug. 17, 1970

Shipment: During July 20-Aug. 10, 1970

B/L Quantity: 14,175.000 M/T

Discharged Quantity: 14,090.000 M/T

Shortage: 85.000 M/T

Percentage of Loss: 0.599647%

e. M.V. "UNION COMPANION" arrived at Kaohsiung on Sept. 5, 1970

Shipment: During Aug. 25-Sept. 15, 1970

B/L Quantity: 9,957.321 M/T

Discharged Quantity: 9,729.321 M/T

Shortage: 227.321 M/T

Percentage of Loss: 2.28295%

[illegible] arrived at Kaohsiung on Nov. 27, 1970

Shipment: During Nov. 5-25, 1970

B/L Quantity: 14,214.714 M/T

Discharged Quantity: 14,238.080 M/T

Shortage: 15,534 M/T

Percentage of Loss: 0.1152025

k. S.S. "HUNGKING VICTORY" arrived at Kaohsiung on March 7, 1971

Shipment: Jan. 20-Feb. 5, 1971

B/L Quantity: 9,508.435 M/T

Discharged Quantity: 9,447.750 M/T

Shortage: 60.675 M/T

Percentage of Loss: 0.6381176%

h. S.S. "DACOLOD" arrived at Kaohsiung on April 10, 1971

Shipment: Feb. 20-Mar. 10, 1971

B/L Quantity: 14,733.7714 M/T

Discharged Quantity: 14,574.240 M/T

Shortage: 179.5314 M/T

Percentage of Loss: 1.2168513%

i. S.S. "UNION FRIENDSHIP" arrived at Kaohsiung on May 26, 1971

B/L Quantity: 13,999.681 M/T

Discharged Quantity: 13,965,500 M/T

Shortage: 34.281 M/T

Percentage of Loss: 0.2455789%

j. S.S. "HAI CHEN" arrived at Kaohsiung on Aug. 10, 1971

Shipment: July 10-31, 1971

B/L Quantity: 5,651.257 M/T

Discharged Quantity: 5,594.320 M/T

Shortage: 56.937 M/T

Percentage of Loss: 1.0944135%

k. S.S. "HAI CHEN" arrived at Kaohsiung on Oct. 1, 1971

Shipment: Aug. 1-25, 1971

B/L Quantity: 5,938.470 M/T

Discharged Quantity: 5,883.560 M/T

Shortage: 54.910 M/T

Percentage of Loss: 0.7913848%

l. S.S. "FRANCES" arrived at Kaohsiung on Oct. 5, 1971

Shipment: Aug. 20-Sept. 20, 1971

B/L Quantity: 13,660.000 M/T

Discharged Quantity: 13,395.360 M/T

Shortage: 254.640 M/T

Percentage of Loss: 1.8654945%

m. S.S. "NORMA" arrived at Kaohsiung on March 2, 1972

n. S.S. "SCAPWIND" arrived at Kaohsiung on March 12, 1972

Shipment: During Jan. 25-Feb. 10, 1972

B/L Quantity: 14,324.050 M/T

Discharged Quantity: 14,239.720 M/T

Shortage: 183.330 M/T

Percentage of Loss: 1.182815%

a. S.S. "LINDA" arrived at Kaohsiung on May 15, 1972

Shipment: During April 20-30, 1972

B/L Quantity: 15,000.000 M/T

Discharged Quantity: 15,537.920 M/T

Shortage: 152.080 M/T

Percentage of Loss: 0.6486613%

b. S.S. "YUNG LEE" arrived at Kaohsiung on Aug. 25, 1972

Shipment: During July 1-20, 1972

B/L Quantity: 19,852.710 M/T

Discharged Quantity: 19,606.720 M/T

Shortage: 245.990 M/T

Percentage of Loss: 1.239075156%

c. S.S. "UNION CONCARD" arrived at Kaohsiung on Dec. 13, 1972

Shipment: During Oct. 25-Nov. 15, 1972

B/L Quantity: 10,328.759 M/T

Discharged Quantity: 10,193.360 M/T

Shortage: 135.409 M/T

Percentage of Loss: 1.3109887535%

P. Plaintiffs imported the following shipments of No. 2 yellow soybeans from the United States subsequent to the voyage in suit:

a. S.S. "HOLAN" arrived at Kaohsiung on Jan. 5, 1973

Shipment: During Nov. 20-Dec. 30, 1972

B/L Quantity: 14,668.337 M/T

Discharged Quantity: 14,489.630 M/T

Shortage: 178.343 M/T

1. S.S. "MIRA" arrived at Kaohsiung on Aug. 29, 1973

   Shipment: During July, 1973

   B/L Quantity: 12,000.000 M/T

   Discharged Quantity: 11,914.320 M/T

   Shortage: 85.680 M/T

   Percentage of Loss: 0.7140%

2. S.S. "ALLUCION" arrived at Kaohsiung on Oct. 2, 1973

   Shipment: During Aug., 1973

   B/L Quantity: 19,800.000 M/T

   Discharged Quantity: 19,527.840 M/T

   Shortage: 272.150 M/T

   Percentage of Loss: 1.374545%

3. S.S. "ALLY" arrived at Kaohsiung on Dec. 15, 1973

   B/L Quantity: 17,749.158 M/T

   Discharged Quantity: 17,235.985 M/T

   Shortage: 514.293 M/T

   Percentage of Loss: 2.897562%

4. S.S. "CAILEE" arrived at Kaohsiung on Jan. 8, 1974

   B/L Quantity: 19,550.342 M/T

   Discharged Quantity: 19,235.280 M/T

   Shortage: 315.062 M/T

   Percentage of Loss: 2.114728%

f. M.V. "[illegible]" arrived June 22, 1974

Shipment: During May, 1974

B/L Quantity: [illegible],128.731 M/T

Discharged Quantity: 25,812.534 M/T

Shortage: 315.197 M/T

Percentage of Loss: 1.3027634

g. M.V. "HILLY" arrived at Kaohsiung on April 5, 1974

Shipment: During March, 1974

B/L Quantity: 13,748.557 M/T

Discharged Quantity: 13,798.540 M/T

Excess: 245.940 M/T

h. M.V. "FRANCES" arrived at Kaohsiung on May 1, 1974

Shipment: During January, 1974

B/L Quantity: 19,051.075 M/T

Discharged Quantity: 18,714.920 M/T

Shortage: 336.155 M/T

Percentage of Loss: 1.7644934

i. M.V. "APOLLON" arrived at Kaohsiung on March 25, 1974

Shipment: During Feb., 1974

B/L Quantity: 19,789.382 M/T

Discharged Quantity: 19,581.060 M/T

Shortage: 217.322 M/T

Percentage of Loss: 1.0991375

j. S.S. "ERETA" arrived at Kaohsiung on May [illegible], 1974

Shipment: During April, 1974

B/L Quantity: 19,849.823 M/T

Discharged Quantity: 19,608.800 M/T

Shortage: 241.023 M/T

Percentage of Loss: 1.205501%

k. S.S. "IRENE" arrived at Kaohsiung on May 25, 1974

Shipment: During April, 1974

B/L Quantity: 26,955.536 M/T

Discharged Quantity: 26,427.280 M/T

Shortage: 527.256 M/T

Percentage of Loss: 1.958247%

l. S.S. "EVER SURENESS" arrived at Kaohsiung on Dec. 10, 1974

Shipment: During Nov., 1974

B/L Quantity: 14,153.133 M/T

Discharged Quantity: 13,927.640 M/T

Shortage: 190.473 M/T

Percentage of Loss: 1.344836%

m. S.S. "SPARTO" arrived at Kaohsiung on Oct. 25, 1974

Shipment: During Sept. 1974

B/L Quantity: 14,286.745 M/T

Discharged Quantity: 13,949.040 M/T

Shortage: 137.705 M/T

Percentage of Loss: 0.977550%

c. M.V. "ALLY" arrived at Kaohsiung on Dec. 20, 1974

Shipment: During Nov., 1974

B/L Quantity: 18,415.010 M/T

Discharged Quantity: 26,139.021 M/T

Shortage: 276.179 M/T

Percentage of Loss: 1.2455%

d. M.V. "PAULINA" arrived at Kaohsiung on Dec. 23, 1974

Shipment: During Nov., 1974

B/L Quantity: 21,906.370 M/T

Discharged Quantity: 21,586.203 M/T

Percentage of Loss: 1.4615246615%

e. M.V. "OLIVIA" arrived at Kaohsiung on Jan. 13, 1975

Shipment: During Dec., 1974

B/L Quantity: 10,097.070 M/T

Discharged Quantity: 9,925.880 M/T

Shortage: 170.190 M/T

Percentage of Loss: 1.6855%

Dated: New York, New York
May 27, 1975

BINGHAM DANA GOLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm
Office & P. O. Address:
99 John Street
New York, N. Y. 10038
Tel.: 732-4546

TO:

DOUGHERTY, MAN, MAHONEY, DELLEDONNO
& MUSTICA
Attorneys for Defendant
30 Rockefeller Plaza

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL K. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of MICHAM EGGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing answers to interrogatories; and that the same are true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

David K. Sullivan

Sworn to before me this
27th day of May, 1975.

CABL ADDRESS
FRIBRENE

134a

TELEPHONE
(212)344-9700

B.E.J. & H. RECEIVED
1975 JUL 14 AM 9:32

CONTINENTAL GRAIN COMPANY

2 BROADWAY
NEW YORK, N. Y. 10004

REF'D.
ANS'D.

MEMBERS
CHICAGO BOARD OF TRADE
NEW YORK PRODUCE EXCHANGE
KANSAS CITY BOARD OF TRADE
MINNEAPOLIS GRAIN EXCHANGE
DULUTH BOARD OF TRADE
WINNIPEG GRAIN EXCHANGE
OMAHA GRAIN EXCHANGE
ST. LOUIS MERCHANTS EXCHANGE

July 11, 1975

Frederick W. Meeker, Esq.
Hill, Rivkins, Carey, Loesberg & O'Brien
96 Fulton Street
New York, New York 10033

Re: "M.V. NORMA"
Your File 86024-FOB/FWM

Dear Mr. Meeker:

This is in reference to your letter of July 7, 1975 asking for my considered opinion of normal shrinkage for the specific commodity and shipment particulars outlined in your letter.

It is my opinion that normal shrinkage for the set of facts stated should be 1.55%, equivalent to 227.85 metric tons. This calculation takes into account the grab bucket discharge method and the measurement of discharge weights by weighing individual bags.

Yours very truly,

Jack Berg
Vice President

JB:lmf

cc: Dan Sullivan, Esq.
Bigham, Englar, Jones & Houston
99 John Street
New York, New York 10038

Peter Zambito, Esq.
Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
576 Fifth Avenue
New York, New York

THIS ACTION CONSOLIDATED WITH 73-251 FOR ALL PURPOSES, STEWART, J.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

TITLE OF CASE

CHUI FA OIL MILL CO., LTD., HUEY FENG OIL MILL CO., LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN TI OIL INDUSTRY CO. LTD., KING TAI JH OIL FACTORY CO. LTD. & KING TAI YI TRADING CO.LTD.,

Plaintiffs.

-VS-

M/S "NORMA", her engines, boilers, &c.,

-VS-

AUSTIN NAVIGATION CORP., LTD.

Dfts. and Third Party Plff.

-vs-

COOK INDUSTRIES, INC.,

Third Party Defendant

ATTORNEYS

For plaintiff: Bigham Englar Jones & Houston
99 John Street
NYC 10038
RE 2 4646

For defendant and 3rd pty pltff Austin Nav. Co.: Dougherty, Ryan Mahoney Pellegrino & Cuffra
[illegible] Ave., NYC 10036 (765-7100)

For 3rd pty defts:

Hill, Rivkins, Carey, Loesberg & O'Brien
45 Fulton St. NYC 10038 BE 3-6171
(3rd-pty deft. Cook Inds. Inc.)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 5 mailed X	Clerk		1/16/73	Bigham, E.	NT	
S. 6 mailed √	Marshal		1/16/73	Clerk		NT
Basis of Action: Admiralty, Breach of Contract, $6,000.	Docket fee					
	Witness fees					
Action arose at:	Depositions					

Shui Fa Oil Mill Co. Ltd. et al, vs. M/S "Norma"her engines,etc.. JUDGE ST

25

DATE	PROCEEDINGS
an 16.73	Filed Complaint issued summons.
an 24.73	Filed Summons and marshals ret. Served: Eddie's Shipping Agency Inc. on 1/18/73.
-18-73	Filed ANSWER of deft. to complaint.
-18-73	Filed Third Party Complaint by Austin Navigation Corp., Ltd.
ug.17.73	Filed Summons and Marshal's return served on Cook Industries, Inc., Zembito, dtd.7/18/73
Dec.7-73	Filed consent order consolidating this action with 73-251 for all purposes under the following title; Shui Fa Oil Mill Co.,Ltd.et al ,pltf. vs MS Norma,her engines,etc. deft. and Austin Navigation Corp.,Ltd. deft. & 3pty. pltf. vs. Cook Industries Inc. 3pty. deft. Stewart, J.
3.7-74	Filed 3pty. deft. request for admissions.
.14-74	Filed 3pty deft. affdt. and notice of motion for an order dismissing action eff. ret. Feb. 13, 1974.
an.14-74	Filed 3pty. deft. memorandum of law in support of above motion.
an.21-74	Filed deft & 3pty. pltf's. interrog. to pltfs.
eb.1-74	Filed for Deft. & 3rd pty Pltff. Answers to Request for Admissions.
ar.1-74	Filed pltfs. affdt. of Daniel A. Sullivan in opposition to motion of 3pty9deft. for summary judmgnet dismissing compalnt and 3pyt. complaint.
Mar.1-74	Filed ptlfs. memorandum of law in opposition to motion for summary judgment.
Mar.5-74	Filed deft. and 3pty. pltf. statement pursuant to Rule9(g).
Mar.5-74	Filed deft. and 3pty. pltf. memorandum of law.
ar.6-74	Filed pltfs. statement pursuant to Rule 9(g).
p.16-74	Filed pltfs. memorandum of law in opposition to motion for a stay.
p.16-74	Filed defts. reply memorandum in support of motion to stay.
p.16-74	Filed defts. memorandum of law in support of motion to stay proceedings.
p.16-74	Filed pltfs. memorandum of law in opposition to motion for stay on reparument.
ep.15-74	Filed pltfs. affdt. of Daniel Sullivan
t. 10-74	Filed memorandum: The 3pty. deft. Cook's motion for summary judgment is denied for the reasons stated. So ordered,Stewart,J. m/n
ct.22-74	Filed deft.Austin Navigation Corp. notice to take deposition of pltf. on Nov. 19,1974.
ct.22-74	Filed deft. Austin Navigation Corp. notice to take deposition of 3pty. deft. Cook Industries on Nov. 19,1974.
t.25-74	Filed pltfs.answers to defts. interrog.
1-21-75	Filed consent order permitting filing of amended 3rd pty complaint. -- Stewart, J.
1-30-75	Filed deft. and third pty. pltf amend & third pty complaint
3-28-75	Filed answer of pltf. to interrog. HL
	PRE-TRIAL CONFERENCE HELD BY (Stewart, J.)
6-24-75	Filed ANSWER of 3rd-pty deft. to amended 3rd-pty complaint HRCLS
7-22-75	Filed 3pty pre-trial memorandum
7-17-75	Filed stip. and order that by order of this Court dated 12-6-73 that the above entitled actions 73civ 250 and 73 civ 251) were consolidated for all purpose under the caption of 73 civ. 250.--Stewart, J. (for pltfs)
7-23-75	Filed pltfs memorandum

IV 250 (73 CIV 251 consolidated with this action for all purposes)
a Oil Co., Ltd., et.al. v.
Norma, her engines, etc.

	PROCEEDINGS	Date Order / Judgment No.
-75	Filed deft. and 3rd pty pltf's memorandum of law.	
0-76	Filed OPINION #43908 ... (consolidated actions 73-250 and 73-251) The two actions having been submitted to the Court on a stipulated record. Plaintiffs' failing to offer any evidence of Austin's activities, have not met their burden of showing that any of Austin's actions were a cause of the loss. We find Austin is not liable to plaintiffs for the shortage. Plaintiffs' complaint against Austin is dismissed; Austin's 3rd pty complaint against Cook is also dismissed. So ordered. ... /n	

THIS ACTION CONSOLIDATED INTO 73-250 FOR ALL PURPOSES, STEWART, J.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE

Jury demand date:

D. C. Form No. 106 Rev.

73 Civ. 251

TITLE OF CASE

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HUNG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI LI OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES INC.,

Defendant.

ATTORNEYS

For plaintiff: BIGHAM, ENGLAR, JONES HOUSTON
99 John Street
New York, N.Y. 10003
RE 2-4646

For defendant:
Hill, Rivkins, McGowan&Carey, Esqs.
[illegible] Fulton St.
[illegible] NY 10038
[illegible] 3-6171

STATISTICAL RECORD

J.S. 5 mailed

J.S. 6 mailed ✓

Basis of Action: Breach of contract to sell soybeans to be shipped to Taiwan on the S.S. NORMA

Action arose at:

COSTS

Clerk	
Marshal	
Docket fee	
Witness fees	
Depositions	

DATE	NAME OR RECEIPT NO.	REC.
1/16/73	Bigham, E.	15 -
1/19/73	USTrea	10

JUDGE STEWART

SHUI FA OIL MILL CO LTD et al., - vs - COOK INDUSTRIES INC.,

73 CV. 255

DATE	PROCEEDINGS	Date Order Judgment E.
Jan. 16-73	Filed complaint & issued summons.	
Jan. 24-73	Filed Summons with Marshal's ret. Served Cook Industries, Inc. by Mrs. Radice, on 1/18/73.	
.27,73	Filed Deft's Answer to Complaint.	
May 23-73	Filed Notice of Motion ret. 5/31/73 at 9:30 AM re: stay.	
7-23-73	Filed memo endorsed on motion dated May 23,1973 to stay action pending arbitration. The Court having heard the parties and considered theirpapers, the motion herein for a stay pending arbitration is denied. So ordered, Stewart, J. m/n	
8-1-73	Filed memorandum of law in suppprt of defts. motion to stay on reargument.	
8.7-73	Filed consent order consolidating this action with 73-250 for all purposes under the following title: Shui Fa Oil Mill Co., Ltd. et al pltf. vs MS Norma, her engines, etc. deft. and Austin Navigation Corp., Ltd. deft. & 3pty. pltf. vs Cook Industries Inc. 3pty. deft. Stewart, J.	
2-20-76	Filed OPINION #3908...(For consolidated actions 73-250 and 73-251) The 2 actions have been submitted to the Court on a stipulated record. Plaintiffs, failing to offer any evidence of Austin's activities, have not met their burden of showing that any of Austin's actions were a concurrent cause of the loss. We find Austin is not liable to plaintiffs for the shortage. Plaintiffs' complaint against Austin is dismissed; Austin's 3rd pty complaint against Cook is also dismissed. So ordered. -- Stewart, J. m/n	
4-2-76	P.T.C. Rec'd - Mailed	

AFFIDAVIT OF NORMAN MOLOSHOK IN OPPOSITION TO MOTION TO DISQUALIFY WITH EXHIBITS ANNEXED (pp. 140a-154a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

76 Civ. 2001 (RJW)

COOK INDUSTRIES INC. and COOK AND COMPANY,

Defendants.

- -X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

NORMAN MOLOSHOK, being duly sworn, deposes and says:

1. I am a member of the firm of Dolson & Cordon and submit this affidavit in opposition to the motion of the defendants to disqualify my firm as counsel for the plaintiffs in the above matter. For the information of the court, I annex a copy of my firm's professional card appearing in the 1976 edition of Martindale-Hubbell Law Directory as Exhibit 1.

2. Our firm has been counsel to the Government of India ("India") on an ad hoc basis for many years. In January of this year, we were designated as principal counsel for India in the United States.

3. Our firm represents several foreign governments and private maritime interests. We have handled many admiralty matters for these clients. When the scope of our representation of India expanded, we decided to enlarge our staff and commenced a search for an additional associate in the admiralty area. This search involved an advertisement in the New York Law Journal in February, 1976. Mr. Frederick W. Meekel was one of the applicants in response to our advertisement and he was engaged by our firm effective April 5, 1976.

4. As the legal adviser to India, we consulted with the Embassy, and in particular, with its Supply Wing, with respect to the possibility of India asserting claims for damages arising out of the grain scandal which had been reported in the press during the past year. India purchased vast quantities of wheat during the relevant period from many suppliers, including hundreds of purchases from the defendants ("Cook"). The essence of the scandal was that

the major grain companies established a policy of short-weighing and over-grading export shipments of grain, especially shipments going to countries such as India where the need for food grains was great and where the grain companies felt that the weighing and inspection facilities were archaic or inefficient.

5. The grain scandal was investigated by the United States Department of Agriculture, several congressional committees, by the Government Accounting Office and by the United States attorneys in several districts. A multitude of indictments were filed and guilty or nolo contendere pleas were received in response to charges of a variety of criminal acts participated in by the grain companies, the grain elevator companies and by employees of various other companies including government licensed weighmasters and inspectors who were bribed or otherwise corrupted to issue false weight certificates and inspection records.

6. Insofar as Cook was concerned, press reports of the records of the United States Department of Agriculture, relied on in part by the Senate Agriculture Committee, disclosed unusually large overages of grain which would confirm a practice of short-weighing exports.

7. On May 6, 1976, Cook was indicted for a conspiracy to steal grain loaded on ships for export at the Bayside Grain Elevator in New Orleans, specifically including the theft of grain by short-weighing ships bound for India. The indictment, annexed to Mr. Meeker's affidavit, details the means by which Cook and its co-conspirators accomplished the short-weighing of grain loaded on ships for export. Cook filed a plea of nolo contendere and paid fines totalling $370,000.

8. The present action is based upon similar allegations of fraudulent conduct by Cook over an extended period of years (See paragraph 19 of the complaint.), and such misconduct is relevant to each of the counts pleaded. Similar complaints were filed in this court against four other grain companies.

9. The foregoing brief statement is not submitted for the purpose of evaluating the merits of the claims of India against the defendants. It is set forth, however, to inform the court as to the nature of the issues raised in the pleadings on this case in distinction to the issues raised in the rather routine soybean matter in which Mr. Meeker represented Cook as an associate of the firm of Hill, Rivkins, Carey, Loesberg & O'Brien. It also affords

the court with some guide as to the scope of public information available and to dispel any suggestion that our firm engaged Mr. Meeker or derived any information concerning this case through its association with Mr. Meeker.

10. Mr. Meeker's affidavit submitted herewith clearly states that his services in connection with the prior soybean litigation did not put him in contact with any of Cook's personnel or put him in a position where it would even have been possible to be exposed to any of Cook's confidential information. The moving papers do not present any facts contrary to those set forth in Mr. Meeker's affidavit.

11. I can certify to the court that no information concerning Cook's affairs was derived by my firm from Mr. Meeker.

12. India has had a long history of purchasing grain from Cook and other vendors in the United States. Obviously, certain information was forthcoming from our clients.

13. Commencing early this year, we undertook an investigation of the public charges levied against the major grain companies and others insofar as they might affect

India. This investigation was commenced prior to Mr. Meeker's association with our firm. During this period, we acquired many of the available government documents including reports of the hearings held by various bodies in 1975 and 1976 as well as transcripts of testimony before the Subcommittee on Foreign Agricultural Policy of the Senate Committee on Agriculture and Forestry, including a statement given by a former employee of Cook before that Committee on March 11, 1976. We studied the Report on Irregularities in the Marketing of Grain dated February 17, 1976, prepared for both houses of the Congress by the General Accounting Office. We obtained a detailed file of press reports of the various investigations and criminal proceedings, copies of the indictments and other documents relating to the numerous criminal proceedings pending in New Orleans, Houston and Galveston. In addition, in late March, 1976, Mr. Roland Paul, one of our associates, personally conducted an investigation of the matter in the New Orleans area.

14. All of the foregoing, which transpired prior to April 5, 1976, and all further services in connection with this and the related litigations have been under the general supervision of Mr. Robert Delson with specific litigation responsibility being assigned to me. All told, since this

matter commenced, three partners, three associates, a legal assistant, a summer intern and administrative and secretarial support personnel have devoted a considerable amount of time to the preparation and prosecution of the five actions pending in this court and in connection with similar claims against other grain suppliers. Several file cabinets of records have been assembled and analyzed.

15. In addition to the obvious problems of managing such massive litigation, the problems in this litigation have been compounded by the fact that communications with our clients have at times been complicated by the distances involved and the different methods and procedures employed. Conferences with our clients have included not only meetings with the personnel of the Supply Wing of the Embassy in Washington, but also a multi-day conference with officials of the relevant Indian agencies who visited our office in early June for the purpose of reviewing the pending litigation and claims.

16. To have a new firm come in to displace our firm at this time would require the new attorneys and our clients to repeat almost all of the above work as it affects the defendant Cook. This can only be costly, time consuming

and highly prejudicial to the interest of our clients and on the basis of the almost negligible contact which Mr. Meeker had in handling one relatively routine and unrelated cargo claim on behalf of Cook, such a requirement would appear to be completely unjustified.

17. When I received the letter dated July 21, 1976 from Mr. Victor S. Friedman, of counsel to the defendant, I telephoned Mr. Friedman's office and arranged for an appointment to meet with him and his associate Mr. Jeffrey M. Siger on July 27, 1976. I was accompanied at this meeting by my partner Mr. Alvin H. Meadow who has also been active in the handling of this litigation and in supervising the activities of Mr. Meeker. We informed Messrs. Friedman and Siger that it was our information that Mr. Meeker had absolutely no contact with any employee of Cook during the soybean litigation; that the matter was disposed of on the basis of the usual shipping documents; that his sole contact was with Mr. John Reams, a member of the law firm of Ireland, Reams, Henderson & Chafetz in Memphis, Tennessee, Cook's independent general counsel*; that the only potential witness he contacted on behalf of Cook was Mr. Willis, an employee of the Destrehan Board of Trade, an independent agency. We

*Mr. Reams had attended a conference at our office on February 17, 1976 in connection with another dispute between India and Cook arising out of a shipment of wheat from New Orleans in January, 1976.

also informed Messrs. Friedman and Siger that it was our information that Mr. Meeker had not conducted an independent investigation of the facts in the soybean matter; that there had been no discovery of Cook in the prior litigation; that while the landed weight of the soybeans was put in issue by the pleadings, that issue was not actively contested but that, in fact, the issue was determined on the basis of a stipulation of facts pursuant to which all parties accepted as evidence the affidavit of Mr. Willis that the weight certificates in that case were accurate. On the basis of these facts, we informed counsel that we did not see any substantial relationship between the soybean matter and the present litigation.

18. Mr. Friedman's affidavit seems to imply (Paragraph 11) that Mr. Meadow and I were unaware of "the extent of Mr. Meeker's activities" while associated with our firm. This statement is completely misleading. We were unaware of only one fact referred to by counsel during that conference, namely, that Mr. Meeker had been in contact with Mr. Reams on May 3rd and 4th, 1976 before the present lawsuit was served on Cook. The following day, I* telephoned Mr. Friedman and told him that Mr. Meeker had informed me that

*Mr. Friedman inadvertently states that Mr. Meadow telephoned him.

he had telephoned Mr. Reams as a matter of courtesy since he had met Mr. Reams in connection with the prior lawsuit. During the call, he informed Mr. Reams of his association with our firm and of the proposed litigation against Cook. In response to Mr. Reams' request, Mr. Meeker forwarded to him the vessel listings for the years 1964 through 1975 and a copy of the proposed complaint. Under all of the foregoing circumstances, I informed Mr. Friedman that we did not believe that our representation of India in this matter was improper.

19. It is significant that Mr. Reams, Cook's general counsel, was aware of the extent of Mr. Meeker's participation in the soybean case, his subsequent association with our firm and the proposed litigation as early as May 3, 1976, before this suit was filed. Mr. Reams then voiced no objection to our firm representing the plaintiffs. It was not until almost two and a half months thereafter that counsel suggested that we consider withdrawing from representing the plaintiffs. It is also significant that the motion papers do not present any evidence to refute any of the foregoing facts which we discussed with counsel during the July 27th meeting or during our telephone call thereafter,

including the fact that Mr. Meeker's activities in the prior litigation did not put him into contact with any Cook personnel or subject him to even the remotest opportunity of acquiring any confidential information concerning Cook's business activities or any other matter related to the instant litigation.

20. As more fully set forth in Mr. Meeker's affidavit, the letter addressed to Bayside Elevator Company was one of many sent by him to a large number of grain elevators in order to serve notice upon them, as provided by the applicable governmental regulations, to preserve their records for the purpose of litigation. The existence of the Bayside Elevator Company was common knowledge and was referred to in many of the reports of investigation and in Cook's indictment. It was not a confidential matter learned by Mr. Meeker during his prior employment.

21. On the basis of the foregoing, it is respectfully requested that the court deny defendant's application and not compel plaintiffs' case to be prejudiced by having its regular counsel disqualified thereby requiring new counsel to repeat the extensive investigation we have conducted in this matter both before

and sir[illegible]. Mecker became associated with our firm.

Norman Moloshok

Sworn to before me this

19th day of August, 1976.

SARAH R. MORSE
NOTARY PUBLIC, State of New York
No. 31-0931600
Qualified in Kings County
Commission Expires March 30, 1978

Corporate Securities, International, Admiralty, Trial and Appellate Practice Tax, Estate Planning, Real Estate, Labor, Family, Literary Property, Entertainment and Probate Law

DELSON & GORDON
230 PARK AVENUE
NEW YORK, N. Y. 10017

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Telephone: 833-9540; Area Code 202

Jakarta, Indonesia Office: Gani Djemat & Associates, Imam Bonjol 76-78
Telephone: 56341. Cable Address: "GASSLAW." Telex: 44114

MEMBERS OF FIRM

Max Delson, born New Yo[illegible] N. Y., 1903; admitted to bar, 1926, New [illegible]k. Education, Columbia University (A.B., 1924) and Columbia University (LL.B., 1926). Awarded LL.D., Chungang University (Seoul), 1955. *Member:* Inter-American and International (Patron) Bar Associations.

I. Cyrus Gordon, born New York, N. Y., 1901; admitted to bar, 1926, New York; 1968, District of Columbia. Education, Columbia University (A.B., 1924) and Columbia University School of Law (LL.B., 1926).

Robert Delson, born New York, N. Y., 1905; admitted to bar, 1929, New York; 1971, District of Columbia. Education, Cornell University (A.B., 1926) and Cornell University and Columbia University (LL.B., 1928). *Fraternity:* Phi Beta Kappa. *Member:* Inter-American, American (Member, Committee on International Law in the Courts of the United States, 1965—) and International (Patron) Bar Associations; American Society of International Law; American Law Institute; International Law Association (American Branch); Maritime Law Association of the United States.

Ernest Fleischman, born New York, N. Y., 1911; admitted to bar, 1934, New York. Education, College of the City of New York (B.S., 1931) and Columbia University (LL.B., 1934).

Norman Moloshok, born New York, N. Y., 1917; admitted to bar, 1941, New York. Education, New York University (A.B., 1937) and Harvard University (J.D., 1940). *Member:* Metropolitan Trial Lawyers Association; The Associa-

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EXHIBIT I

DELSON & GORDON (Continued)

tion of Trial Lawyers of America.

Carl Slater, born New York, N. Y., 1925; admitted to bar, 1952, New York; 1968, District of Columbia. Education, Harvard University (A.B., 1948) and Harvard University (LL.B., 1951). *Fraternity:* Phi Beta Kappa. *Member:* American Society of International Law.

Eugene G. King, born New York, N. Y., 1919; admitted to bar, 1949, New York. Education, College of the City of New York and Brooklyn College and Columbia University (LL.B., 1949).

I. Frederick Shotkin, born New York, N. Y., 1927; admitted to bar, 1951, New York; 1952, U.S. Tax Court. Education, Wharton School, University of Pennsylvania (B.S. in Econ., 1947) and Harvard University (LL.B., 1950) and New York University (LL.M. in Taxation, 1955). *Member:* The Federal Bar Council (Member, 1964— and Vice Chairman, 1965—, Committee on Taxation).

Robert W. Berend, born Miami Beach, Florida, 1931; admitted to bar, 1955, New York. Education, New York University (A.B., 1952) and Yale University (LL.B., 1955). *Fraternity:* Phi Beta Kappa. Member, Board of Editors, Yale Law Journal, 1954-1955.

Milton R. Gleit, born New York, N. Y., 1937; admitted to bar, 1962, New York. Education, New York University (A.B., 1958); and Harvard University (J.D., 1961). *Fraternity:* Phi Beta Kappa.

Ralph P. Katz, born New York, N. Y., 1928; admitted to bar, 1952, New York. Education, Harvard University (A.B., 1948) and Harvard University (LL.B., 1951). *Fraternity:* Phi Beta Kappa.

George Halpern, born New York, N. Y., 1907; admitted to bar, 1929, New York. Education, New York University and New York University (LL.B., 1927).

Ira, B. Harkavy, born Brooklyn, N. Y., 1931; admitted to bar, 1954, New York; 1960, U.S. Supreme Court; 1970, U.S. Customs Court. Education, Brooklyn College (B.A., 1951) and Columbia University (J.D., 1954). *Fraternity:* Phi Alpha Delta. Chairman, Community Planning Board #14 of Brooklyn, 1968—. President, Brooklyn College Alumni Association, 1973—. Member, Board of Advisors, Manhattan Community College, 1974—.

Howard A. Jaffe, born Newark, New Jersey, 1941; admitted to bar, 1966, New York. Education, Yeshiva University (A.B., 1962; M.H.L., 1964) and New York University (J.D., cum laude, 1965). *Fraternity:* Order of the Coif. Member, New York University Law Review, 1964-1965. *Member:* Association of the Bar of the City of New York (Member, Bankruptcy Committee, 1970-1972).

Evan L. Gordon, born New York, N. Y., 1941, admitted to bar, 1966, New York. Education, Columbia University (A.B., 1963) and Columbia University (LL.B., 1966).

Burton G. Lipsky, born Syracuse, N. Y., 1937; admitted to bar, 1962, New York; 1967, U.S. Tax Court; 1967, U.S. Supreme Court; 1968, Court of Claims. Education, University of Michigan (B.B.A., 1959) and Syracuse University (LL.B., summa cum laude, 1962). *Fraternity:* Order of the Coif. Notes Editor, Syracuse Law Review, 1961-1962. Trial Attorney, Tax Division, U.S. Department of Justice, 1962-1967.

Faith Colish, born Brooklyn, N. Y., 1938; admitted to bar, 1960, New York. Education, Smith College, University of Michigan (A.B., 1957) and Columbia University (J.D., 1960). Comment Editor, Securities Regulation Law Journal, 1973—. *Member:* Association of the Bar of the City of New York (Member, Administrative Law Committee, 1963-1966); American Bar Association (Member, Securities Committee, Section on Administrative Law, 1974—).

Alvin H. Meadow, born Bronx, N. Y., 1932; admitted to bar, 1960, New York. Education, Queens College (B.A., 1953) and Columbia University (LL.B., 1960). *Fraternity:* Phi Alpha Delta. Attorney, Federal Trade Commission, 1961-1964. Assistant U.S. Attorney, Southern District of New York, 1965-1968.

Richard S. Brook, born Brooklyn, N. Y., 1942; admitted to bar, 1967, New York. Education, Brooklyn College (A.B., 1964) and Columbia University (LL.B., 1967).

Stephen W. Stein, born New York, N. Y., 1937; admitted to bar, 1962, New York. Education, Princeton University (A.B., 1959), Columbia University (LL.B., 1962) and New York University (LL.M., 1963). Assistant General Counsel, Bureau for Asia, Agency for International Development, 1971-1973. *Member:* American Bar Association (Member, Committee on Law and the Developing Countries, Section of International and Comparative Law, 1974—).

Bertrand H. Weidberg, born Staten Island, N. Y., 1940; admitted to bar, 1965, New York; 1968, Florida. Education, Cornell University (B.S., 1962) and Columbia University (LL.B., 1965).

WASHINGTON, D. C. OFFICE
RESIDENT PARTNER

Martin R. Ganzglass, born New York, N. Y., 1941; admitted to bar, 1964, New York; 1971,

(This card continued)

DELSON & GORDON (Continued)

District of Columbia. Education, City College of the City University of New York (A.B., 1961) and Harvard University (LL.B., 1964).

COUNSEL

William E. Ringel, born Austria, 1901; admitted to bar, 1929, New York; 1937, U.S. Supreme Court. Education: City College of the City University of New York (B.S., 1923); New York University (J.D., 1929). Author: "Handbook on Search & Seizure," 1963; "New York State Law of Weapons," 1964; "Legal & Illegal Searches," 1965; "Arrests, Searches & Confessions," 1966; "Identification & Police Lineups," 1968; "Obscenity & Freedom of Speech," 1970; "Searches & Seizures, Arrests & Confessions," 1972, published by Clark-Boardman, New York. City Magistrate, New York City, 1940-1955. Justice of the Court of Special Sessions, New York City, 1955-1962. Acting Judge of the Court of General Sessions, New York City, 1957-1958. Judge of the Criminal Court, New York City, 1962-1971. Acting County Court Judge, New York City, 1962. *Member:* Association of the Bar of the City of New York (Chairman, Committee on Alcoholism, 1968-1969); New York State Bar Association (Chairman, Criminal Courts Section, 1967—).

Andrew D. Weinberger, born 1901; admitted to bar, 1926, New York; 1946, U.S. Supreme Court. Education, New York University and New York Law School (LL.B., 1925). Awarded LL.D. by Wilberforce University, Ohio, 1959. Author: "Freedom and Protection: The Bill of Rights," 1962; "Miscegenation Statutes," in Ashley Montagu's "Man's Most Dangerous Myth," 4th ed., 1964; "A Reappraisal of the Constitutionality of Miscegenation Statutes," 42 Cornell Law Quarterly 208, 1957; "A Partial Solution to Legitimacy Problems Arising from the Use of Artificial Insemination," 35 Indiana Law Journal 143, 1960 and 10 Law Review Digest 1, 1960; "Culture and Japanese Law," 49 American Bar Association Journal 764, 1963.

George W. Miller, born Rutherfordton, North Carolina, 1922; admitted to bar, 1957, New York. Education, Agricultural & Technical College of North Carolina (B.S., 1943) and Brooklyn Law School (LL.B., 1955). Member, New York State Assembly, 1971—.

Francis J. Purcell, born New York, N. Y., 1911; admitted to bar, 1936, New York. Education: Manhattan College (A.B., 1933); Fordham University (J.D., 1936). Regional Administrator, New York Office, Securities and Exchange Commission, 1953-1955.

Jule E. Stocker, born Detroit, Michigan, 1906; admitted to bar, 1929, New York. Education: Harvard College (A.B., 1926); Harvard University (J.D., magna cum laude, 1929). *Fraternity:* Phi Beta Kappa. Editor, Harvard Law Review, 1927-1929. Co-author: *Drafting Wills*, 1946, latest edition, 1973. Author: *Wills for Successmen*, 1944. Principal Draftsman of *New York Business Corporation Law*, 1961. Drafting Consultant, New York State Joint Legislative Committee on Revision of Corporation Laws, 1960-1961. Member: Advisory Committee, New York State Commission on Estates, 1961-1966; Industry Advisory Committee to Subcommittee on Variable Life Insurance and Variable Annuities of National Association of Insurance Commissioners, 1973; New York State Legislative Advisory Committee on Recodification of Insurance Law, 1974—*Member:* New York State and American (Member: Committee on Insurance Companies, Section of Taxation, 1968—; Committee on Non-Front Corporations, Section of Corporation, Banking and Business Law, 1968—; Chairman, Subcommittee on Separate Accounts and Variable Annuities, 1970-1974) Bar Associations; International Bar Association; Association of Life Insurance Counsel; American Law Institute; Legal Section, American Life Insurance Association (Member, Subcommittee on Company Federal Income Tax, 1972-1973).

Roger Perry, born New Rochelle, N. Y., 1928; admitted to bar, 1951, New York. Education, Harvard University (A.B., 1949) and Yale University (LL.B., 1951).

Eugene Frederick Roth, born 1905; admitted to bar, 1927, New York. Education, Columbia University (A.B., 1924) and Columbia University (LL.B., 1926). Editor, Columbia Law Review, 1925-1926. Assistant General Counsel, United States Treasury Department, 1943-1944. Chief, Criminal Division, U.S. District Attorney's Office, Southern District of New York, 1951-1952.

ASSOCIATES

William C. Basedow; Michael L. Brendzel; Jeffrey S. Dubin; Mark M. Feldman; Stephen A. Kals; Arthur S. Mantel; Roland A. Paul; Henry N. Schiffman; Marvin Srulowitz; Martin H. Weisfuse; Robert P. Wittes.

DEFENDANTS' REPLY AFFIDAVIT TO THE ANSWERING PAPERS OF THE PLAINTIFFS WITH EXHIBITS ANNEXED (pp. 155a-180a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA, Plaintiffs, -against- COOK INDUSTRIES, INC. and COOK AND COMPANY, Defendants.	REPLY AFFIDAVIT 76 Civ. 2001 (R.J.W.)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

VICTOR S. FRIEDMAN, being duly sworn, deposes and says that:

1. I am a member of the firm of Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants, Cook Industries, Inc. and Cook & Company. I submit this affidavit in reply to the answering papers submitted by plaintiffs in opposition to the motion of defendants for an order disqualifying Delson & Gordon as counsel for the plaintiffs and barring Delson & Gordon from acting as counsel or assisting other counsel in this action or any similar action against the defendants.

2. The papers submitted by plaintiffs seek to deflect the attention of the court from the extent of

Mr. Meeker's activities while with the Hill, Rivkins firm. They discuss at length alleged wrongdoings by the defendants (all of which defendants deny), press coverage of the grain investigations, and the work allegedly done thus far by Delson & Gordon on behalf of their clients. At the same time, plaintiffs offhandily dismiss the basis for defendants' motion as involving "almost negligible contact which Mr. Meeker had in handling one relatively routine and unrelated cargo claim on behalf of Cook." (Moloshok Affidavit, ¶16)

3. Mr. Meeker's affidavit is the keystone of plaintiff's opposition to the defendants' motion. In his affidavit, he does not dispute the fact that he was the attorney at Hill, Rivkins who did the work on the soybean actions, but rather, Mr. Meeker has sought to downplay the amount of activity involved in his representation of Cook in those actions. He purports to describe the actions taken by him on behalf of Cook, and in doing so, states that they "only" involved the preparation of answers, a motion for a stay of arbitration, a request for admissions,* a motion for summary judgment, a stipulated record, memoranda relating to the foregoing, and attending pre-trial conferences

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* Contrary to plaintiffs' claim that Mr. Meeker did not participate in discovery, requests for admission are a discovery device. FRCP Rule 26(a).

and a settlement conference (Meeker Affidavit, ¶25). Mr. Meeker dismisses the soybean actions as being but one "routine" case of the approximately one thousand cases handled by him in his four years at Hill, Rivkins (Meeker Affidavit, ¶5 and ¶26).

4. As demonstrated by the April, 1976 bill of the Hill, Rivkins firm to Cook Industries Inc. (Exhibit 9 hereto), which sets forth in detail the services rendered to Cook in connection with the soybean actions, Mr. Meeker's description of the services he performed for Cook is, to say the least, understated and his characterization of the soybean actions as routine is patently absurd. The bill is seven pages long, largely single spaced, and in the amount of $7,764.85. If, as Mr. Meeker claims, he handled this case in the same "routine" manner as his other one thousand cases, in that four year period Mr. Meeker's billings would have amounted to more than seven and three quarter million dollars!

5. In their efforts to create the impression that the actions in question are not substantially related, Mr. Meeker and Mr. Moloshok apparently forget the basis of their clients' first cause of action for 10 million dollars. Plaintiffs state that allegations of fraud and other wrongdoing are involved in the present litigation, whereas the soybean actions involved a claim of breach of

contract for shortweighing and quality defects. Plaintiffs also point out that certain issues raised in the soybean actions are not (as yet) raised in the instant litigation. Glaringly omitted from the affidavits offered by plaintiffs is any statement to the effect that plaintiffs' first cause of action is one for breach of contract based upon shortweighing and quality defects.

6. In addition, plaintiffs are less than candid in their discussion of whether the accuracy of the weight certificates was disputed in the soybean actions. Mr. Meeker states that at the time the matter was submitted to the court the accuracy of the weight certificates was not an issue (Meeker Affidavit, ¶24). What he neglects to point out is that in response to a request for an admission (Exhibit 10 hereto without attachments) propounded by Hill, Rivkins to the third party plaintiff that specified weight certificates are true copies, the third party plaintiff answered that it "did not weigh the cargo in question, and while having received copies of the certificates marked B-1 through B-8 [to the request for admissions], can neither admit nor deny the accuracy of the contents of said certificates at this time." (Exhibit 11 hereto). Thus, although the issue of the accuracy of the weight certificates may not

have been ultimately submitted to the court, the issue of their accuracy certainly was at one time in dispute.

7. Thus, the issues in the soybean actions and the present litigation are on their face substantially related, and Mr. Meeker was deeply involved in the soybean actions as the attorney responsible for Cook's defense. With that showing, the inquiry should cease and Delson & Gordon should be disqualified as counsel for the plaintiffs.

8. Plaintiffs, however, go beyond these matters and seek to explore the substance of what Mr. Meeker did as Cook's attorney. At Paragraph 30 of his affidavit, Mr. Meeker iterates a series of denials to which Messrs. Moloshok and Meeker repeatedly refer as supporting their argument that defendants' motion be denied. Specifically, Mr. Meeker states:

> "At the risk of repetition, let me state unequivocally that the issues raised in the soybean matter did not require me to investigate the loading procedures at Reserve, Louisiana. I did not inquire into the names of Cook's personnel at Reserve, Louisiana or the activities of Cook in connection with the issuance of bills of lading, weight certificates, loading practices or any aspect of its business and, in fact, I did not conduct any such investigations and no such information came to my attention. The other parties to the litigation did not conduct any discovery of Cook although a notice to take Cook's deposition was served. The issues in that case did not require me to contact any employee of Cook, and, in fact, I did not contact any employee of Cook. Mr. Friedman is incorrect in his averments (Paragraph 7) that I did any of the foregoing." (Emphasis added).

9. It is my understanding of the law applicable to this motion that the defendants need show no more than that the issues in the soybean actions and the present action are substantially related and that Mr. Meeker was not involved merely at the periphery of the soybean actions. Mr. Meeker's denials, however, raise questions which go beyond these matters into subjects which I believe are within those very areas which the courts have consistently sought to avoid subjecting to the adversarial process, i.e., the substance of what Mr. Meeker did or did not do in connection with his prior representation of Cook. By delving into these subjects, Mr. Meeker necessarily places himself and his former client into a confrontation over their respective memories and veracity.

10. It was defendants' intention in their moving papers to avoid such a confrontation, and even at this point, defendants do not believe it appropriate or necessary to submit affidavits or obtain discovery from those who were involved in the soybean actions as to the details of just what Mr. Meeker did as Cook's attorney.* However, without such affidavits or discovery, it still is possible to point out the inaccuracy of Mr. Meeker's present recollections simply by reference to documents contained in the file

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* Of course, if the court believes otherwise, defendants respectfully request the opportunity to do so.

maintained by Hill, Rivkins in connection with the soybean actions. May I add, that my purpose in setting forth the following is not to call into question the truthfulness of Mr. Meeker's affidavit, but rather to point out how, when a client and its former attorney engage in a dispute over such matters, what is threatened is the very basis of the attorney-client privilege which Canon 4 of the Code of Professional Responsibility seeks to protect. Indeed, although the handwritten notes referred to at paragraphs 12 and 13, infra, clearly refute certain of Mr. Meeker's denials, in order to protect that privilege Cook can do no more than refer to them in only the most general terms.

11. Mr. Meeker denies ever inquiring as to the names of Cook personnel at Reserve or the loading practices at Reserve. Yet, on September 26, 1973, Mr. Meeker wrote to John Reams, Esq., of Ireland, Gibson & Reams, now Ireland Reams, Henderson & Chafetz, counsel to Cook in Memphis, Tennessee and stated in part: "We should greatly appreciate you putting us in touch with the people from Cook at Reserve who might have records or recollections of the details of the loading so that we may investigate it further." (Exhibit 12 hereto).

12. Mr. Meeker denies that any such information ever came to his attention, yet handwritten notes in Hill, Rivkin's file on the soybean actions contain the name of

a Cook employee at Bayside Elevator in Reserve, as well as the names of two United States Department of Agriculture employees.

13. Mr. Meeker denies ever contacting any Cook employees, and yet handwritten notes dated "12/13/74" and bearing the name of the same Cook employee at Bayside Elevator in Reserve across the top, set forth certain information apparently obtained through a conference of some sort. In addition, Mr. Meeker does not deny contacting Mr. Reams,* whom he describes as Cook's counsel. Apparently, Mr. Meeker considers his written and oral communications with Cook's counsel over the years, the subjects of which he does not fully describe in his affidavit, as somehow not posing the same problems as direct communications with Cook employees.

14. Francis J. O'Brien, Esq., the partner at Hill Rivkins who assigned the soybean actions to Mr. Meeker, advises me that the aforementioned notes are not in his handwriting and that Mr. Meeker was the only other attorney working on the soybean action.

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* He omits to state that he also spoke with Mr. Reams' partner, Harry B. Ireland, Jr.

15. The extent of Mr. Meeker's activities on behalf of Cook are detailed in the Hill, Rivkins bill annexed hereto as Exhibit 9, and despite his present protestations to the contrary he was deeply involved in a matter involving issues substantially related to the instant case. One particularly significant act by Mr. Meeker, while acting as counsel for Cook, demonstrates beyond peradventure that even he viewed the issues in the soybean actions and those now raised in this action as substantially related.

16. On July 8, 1975, during the period of time in which Mr. Meeker was preparing a stipulation of facts for submission to the court and obtaining the opinion of an expert on the issue of shrinkage, he sent a Hill, Rivkins messenger to obtain six back issues of The New York Times. These six issues, contain the following front page stories:

> May 20, 1975, p. 1, c. 5, "U.S. Agents Push A Broad Inquiry Into Grain Trade [Subtitle] Guilty Pleas by 5 Inspectors in New Orleans Indicate Irregularities in Handling."
>
> May 22, 1975, p. 1, c. 1, "100 Others Linked to Grain Scandal [Subtitle] Inquiry Said to Be Focusing on Short Weighing and Profiteering Reports."
>
> May 29, 1975, p. 1, c. 1, "Butz Says Inquiry On Grain Spreads [Subtitle] East & West Coast Ports Now Involved - Links to Organized Crime Seen."
>
> June 15, 1975, p. 1, c. 4, "Agriculture Aides Halted Grain Investigation in '72".

June 16, 1975, p. 1, c. 3, "Europeans Press Grain Complaints [Subtitle] 6 Executives Visiting U.S. to Voice Grievances and 'Get what we paid for'."

June 17, 1975, p. 1, c. 6 "Grain Export Study Found Safeguards were Ignored [Subtitle] Agriculture Report of '73 Said Agency Failed to Meet Its Main Obligations-Some Shortcomings Persist."

June 25, 1975, p. 1, c. 4, "Inquiry Widening on Grain Imports [Subtitle] 2 of the World's Largest Concerns are Reportedly Subjects of U.S. Study."

The cost of obtaining the issues was charged to Cook as a disbursement in the soybean actions. Annexed hereto as Exhibit 13 is a copy of the Hill, Rivkins petty cash voucher for obtaining these back issues setting forth Mr. Meeker's initials, together with a copy of a receipt from The New York Times describing the issues obtained.

17. Based upon all of the foregoing, I do not understand how Mr. Meeker can "unequivocally state, in all candor and in good conscience, that my activities at the Hill, Rivkins firm on behalf of Cook in the soybean matter were not related in any way to the present action pending before the court." (Meeker Affidavit ¶35).

WHEREFORE, I respectfully request that an order be entered disqualifying Delson & Gordon as counsel for the plaintiffs, barring Delson & Gordon from acting as counsel or assisting other counsel in this action or any similar actions

against the defendants and granting such other and further relief as the court deems just and proper.

/s/ Victor S. Friedman
Victor S. Friedman

Sworn to before me this
23rd day of August, 1976.

/s/ Jeffrey M. Siger
Notary Public

Not... New York
C...

NEW YORK, N. Y. 10038 April 22, 1976

Cook Industries, Inc., c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove, Memphis, Tennessee 38131

TO HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN, DR.
99 FULTON STREET
TO PROFESSIONAL SERVICES AS FOLLOWS

Shui Fa Oil Mill
v. Cook Industries
86024/FOB/FWM

FOR PROFESSIONAL SERVICES RENDERED in regard to an action initiated in the United States District Court for the Southern District of New York by Shui Fa Oil Mill against Cook Industries Inc., and the M/S NORMA and her Owners to recover damages in the amount of $32,452.46; and a further action initiated on a further third-party complaint filed by Austin Navigation Corp., Ltd., to recover any damages sustained by Austin Navigation Corp., Ltd., in the original complaint whereinafter full pre-trial discovery and inspection was involved, interrogatories, stipulations, facts, etc.; the matter was tried before the Honorable Charles Stewart resulting in a written opinion dismissing both causes of action against Cook Industries Inc., from January 30, 1973 to March 1976, including:

Cook Industries, Inc.
John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Receiving and reviewing a copy of the Summons & Complaint in the action initiated by Shui Fa Oil Mill; contacting the attorneys for plaintiff and obtaining an extension of time to answer; requesting and reviewing the pertinent sales contract and charter party together with the documentation on Cook Industries, Inc., relating to the alleged cargo shortage;

Requesting from plaintiff's attorneys copies of the survey report and bills of lading in plaintiffs possession; reviewing the same; requesting Mr. Meeker to forward form IOSA -79;

Determining that since the sales contract contained a London Arbitration Clause that an appropriate motion should be made to stay the proceedings pursuant to the United States Arbitration Act; reviewing the applicable law and preparing the necessary affidavits, briefs and motion papers to stay the proceedings; appearing before the United States District Court in July and arguing the motion to stay;

Being advised that the Court was of the view that the United States Arbitration Act did no apply to foreign arbitrations; since it was our view that this decision was incorrect and not accompanied by a memorandum, a motion was made for reargument; preparing the necessary motion papers pursuant to Rule 4, oral reargument; having requested a date for such proceeding;

Receiving a request from Judge Stewart that all of the attorneys involved, that is the attorneys for the plaintiff, Cook Industries, Inc., and Austin Navigation Corp., attempt to develop all the facts so that a stipulation could be agreed to; receiving the court's direction that this be done by November 1, 1973;

Cook Industries, Inc.
c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Being advised that Austin Navigation Corp., proposed to file a third-party complaint against Cook Industries Inc.,; being advised that Cook Industries had received a third-party complaint and requesting the court that a consolidation order be entered as to both actions; requesting and obtaining various extensions of time as to a third-party complaint;

Requesting Judge Stewart to set down the date for reargument of the hearing of the motion to stay; attending at a motion before the Honorable Charles Stewart wherein an additional motion was filed with a third-party complaint to stay the motion because of the charter provision providing for New York arbitration;

Receiving a detailed letter citing the various authorities and cases cited by plaintiff in regard to the reargument of the motion; similarly receiving authorities from Austin Navigation Corp.,; conferring with counsel for Austin Navigation Corp., and requesting information as to the loading procedure at Reserve Port of Loading as well as the names of Cook's personnel at the loading port;

Preparing a letter brief to Judge Stewart in regard to citing various authorities as to why both the sales contract and the charter party should be stayed; being orally advised by Judge Stewart that the matter was complicated because of the conflicting arbitration provision;

Cook Industries, Inc.
c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Attending at a pre-trial hearing in November of 1973; pointing out to Judge Stewart that the motion for reargument had still not been decided; attending at a conference between various counsel in an attempt to determine the stipulated facts and the possibility of settlement; rejecting a proposal that a time bar be not raised as to the third-party complaint;

Reviewing and executing an order of consolidation; requesting and obtaining copies of invoices of the stevedores at Reserve and furnishing the same to Austin Navigation Corp.'s attorneys; advising Austin Navigation Corp.'s attorneys that the claim appeared to be due to a shortage due to a normal shrinkage and that the weighting operation in Formosa was performed subsequent to the bagging of the cargo;

Consequently, advising Austin Navigation Corp.'s attorneys that there was no reason to contribute to any settlement, particularly in view of the agreement between plaintiff and Cook that loading weights would govern payment terms; requesting that the vessel's logs be furnished;

Conferring with Mr. Daniel X. Willis of the Destrehan Board of Trade and obtaining his testimony; preparing and forwarding to Mr. Willis an affidavit and requesting that the same be forwarded;

Preparing various papers relating to a motion for summary judgment, returnable February 1974 agreeing to an extension of the return date; reviewing a consent order permitting the filing and amended complaint which amended complaint added a cause

Cook Industries, Inc.
c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

of action for shipping guarantee as to weight and quantity;

Preparing detailed interrogatories to be propounded to the plaintiffs seeking particulars of the complaint relating to shortage; also receiving and reviewing interrogatories similarly propounded to plaintiffs concerning their cause of action; preparing and forwarding requests for admission upon Austin Navigation Corp. and receiving and reviewing the answers to these requests for admission;

Determining that Mr. Jack Berg of Continental Grain Company would be the likely expert to furnish an opinion as to normal shortage and soyabean; conferring with Mr. Berg and addressing correspondence to him outlining the facts of this case and forwarding various documents such as the weight certificates, bills of lading, etc.

Receiving a notice of examination of trial for the oral deposition of Cook Industries, as well as a summary notice as to the complaint; conferring with plaintiff's attorneys and determining that the testimony of Mr. Tien and Wu should be taken on written interrogatories before the United States Consul in Taiwan; reviewing the proposed interrogatories and advising counsel that no objection would be raised as to such procedure;

Receiving the memorandum from the plaintiff and motion for summary judgment indicating that issues of fact should not be so decided; preparing and serving answers to the amended third-party complaint as well as answers to the original third-party complaint; conferring with counsel at length as to a stipulation of fact;

Cook Industries, Inc.
c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Preparing a statement pursuant to Rule 9 of the Federal Rules in support of the motion for summary judgment and annexing thereto the various documents in support of the same; being advised by Judge Stewart that a pretrial conference would be held in June 1975; attending at such conference and advising the court that the stipulation of facts would be filed by July 2, 1975, and briefs by July 9, 1975; being advised by the court that if the parties could not agree to the stipulation we would renew our motion for summary judgment;

Exchanging various drafts as to the proposed stipulation with counsel with observations as to the contents; advising the attorneys for the various parties as to the areas in the stipulation which we believe should be covered; forwarding drafts of Mr. Berg's testimony to the attorneys with the observation that no discovery had been made, which firm had been representing the parties on the amount of shortage;

Obtaining an extension of time to file the stipulation and briefs until July 9 and July 16; forwarding a final letter to Mr. Berg and receiving his executed copy; forwarding to Mr. Berg our check covering his fees; reviewing and executing the proposed stipulation and preparing a detailed memorandum of law in support of Cook's position;

Reviewing the various briefs submitted by the other attorneys and commenting on the same to the court; forwarding to John Reams, Esq., copies of all of the papers submitted to the court; receiving advices from the court that Judge Stewart had handed down a written opinion dismissing the complaint;

Cook Industries, Inc.,
c/o John M. Reams, Esq.
Ireland, Reams, Henderson & Chafetz
2856 Directors Cove
Memphis, Tennessee 38131

Page Seven

Preparing and forwarding a Interlocutory Decree; Exchanging correspondence with counsel for the parties in view of the issue - alleged seawater; finally, obtaining a final decree from Judge Stewart dismissing the complaint on the merits;		
IN FULL FOR PROFESSIONAL SERVICES	$ 7,500	00
DISBURSEMENTS:		
inclusive of photostats, long distance telephone calls, carfare expense and miscellaneous (including disbursements billed June 5, 1975)	264	85
Total Amount Due	$ 7,764	85

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al, Plaintiffs, -against- M/S "NORMA", her engines, etc., -and- AUSTIN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES INC., Third-Party Defendant.	73 Civ. 250 (CES) REQUEST FOR ADMISSIONS

TO: DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, Attorneys for Defendant and Third-Party Plaintiff, AUSTIN NAVIGATION CORP. LTD.

Third-Party Defendant, COOK INDUSTRIES INC., requests Defendant and Third-Party Plaintiff, AUSTIN NAVIGATION CORP. LTD., within 30 days after service of this request to make the following admission for the purpose of this action only and subject to all pertinent objection to admissibility which may be interposed at trial.

1. That the following document, exhibited with this request, is genuine. The original charter party is the contract on which this action is founded, and Exhibit A attached hereto is a true copy thereof.

2. That the copies of the loading weight certificates attached hereto and made a part hereof as Exhibits B-1 through B-8 which were issued at the port of loading for cargo carried aboard the Norma in January through March of 1971 are true copies of such certificates.

3. That the copies of the loading invoices from St. John Snipping Co. Inc. to "S/S Norma and/or owners and/or Gulf Coast Shipping Co.p., as agents" attached hereto and made a part hereof as Exhibits C-1 through C-4 for fees and expenses incurred during the loading of the Norma at Reserve, Louisiana, in January 1971 are true copies of such invoices.

4. That the copies of the bills of lading attached hereto and made a part hereof as Exhibits D-1 through D-16 are true copies of the originals as issued by Austin Navigation Corp. Ltd. by its agents, Gulf Coast Shipping Corp.

Attorneys for Third-Party Defendant
COOK INDUSTRIES INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

MS "NORMA", her engines,, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

ANSWERS TO REQUEST FOR ADMISSIONS

73 CIV. 250 (CES)

Defendant and third-party plaintiff by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Answers to the Request for Admissions served by third-party defendant, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at trial, allege upon information and belief as follows:

1. Answering Request for Admissions No. 1, denies that the document annexed thereto as Exhibit A is a true and complete and/or genuine copy of the charter party entered into between the Austin Navigation Corp. Ltd. and Cook Industries and denies the remaining allegations thereof.

2. Answering Request for Admissions No. 2, defendant and third-party plaintiff did not weigh the cargo in

question and, while having received copies of the certificates marked B-1 through B-8, can neither admit nor deny the accuracy of the contents of said certificates at this time.

3. Answering Request for Admissions No. 3, admits only that the invoices marked Exhibits C-1 through C-4 were rendered to "S/S NORMA AND/OR OWNERS AND/OR GULF COAST SHIPPING CORP., AS AGENTS", but can neither admit nor deny the accuracy of the content of said invoices.

4. Answering Request for Admissions No. 4, denies that the documents annexed thereto as Exhibits D-1 through D-16 are true and complete copies of the original bills of lading issued for the cargo in suit. It is to be noted also that the said Exhibits are in many instances illegible and cut off on the right-hand side.

Dated: New York, N. Y.
January 29, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Defendant and
Third-Party Plaintiff

BY: S/Peter J. Zambito
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ZAMBITO, being duly sworn, deposes and says:

That he is an attorney and member of the firm of DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, attorneys for defendant and third-party plaintiff in the within action.

That he has read the foregoing ANSWERS TO REQUEST FOR ADMISSIONS and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true. The reason this verification is made by deponent and not by the defendant and third-party plaintiff is because said defendant and third-party plaintiff is a foreign corporation, none of whose officers are located within this District.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are books, records and documents in deponent's possession.

S/Peter J. Zambito
PETER J. ZAMBITO

Sworn to before me this
31st day of January, 1974.

VINCENT J. BARRA
Notary Public, State of New York
No. 31-[illegible]-2035
Qualified in [illegible] County
[illegible]

Notary Public

September 26, 1973

John Reams, Esq.
Ireland, Gibson & Reams
Suite 115
2221 Democrat Road
Memphis, Tennessee 38131

Re: NORMA
Shui Fa et al vs.
Cook Industries
Our File: 86084-FOB/FWM

Dear John:

Further to our telephone conversation of yesterday, the hearing on reargument on our motion to stay the captioned action seemed to go rather well and we are vaguely optimistic that the Judge will get it right this time.

The matter is somewhat complicated by the third party action against Cook brought by the carrier in Shui Fa's action against Austin Navigation, which we also plan to move to stay pending arbitration.

In this regard, we are having discussions with counsel for Austin and would appreciate in this regard if you could put us in a position to state which party, Cook or Austin, bore the costs of loading and stowing the vessel at Reserve.

We should greatly appreciate your putting us in touch with the people from Cook at Reserve who might have records or recollections of the details of the loading so that we may investigate it further.

John Reams, Esq. September 26, 1973

We look forward to your advices and shall not fail to advise as soon as a decision is forthcoming on the reargument.

Very truly yours,

HILL, RIVKINS, McGOWAN & CAREY

By:

F. W. Meeker

FWM/nm

The New York Times

180a BACK COPY DEPARTMENT

CASH RECEIPT

AMOUNT $ 3.30 No. 163006

ALL SALES FINAL NO REFUNDS

PAPER ISSUE DATE	AMOUNT
D 5/20 22 29	1.50
S 6/15	.75
D 6/16, 17, 25	1.05
(350 A 527 - C.N.R.	
TOTAL	$ 3.30

3120 SEP 69

PETTY CASH VOUCHER

DATE DISBURSED	CASE NO.	PURPOSE	AMOUNT	
7/8/25	86024/F...	Back issues of N.Y. Times	3	50
7/8/25	86024/F...17	3M Xerox	1	00
7/8/25	86024/F...17	RRR FARES TO N.Y. PUBLIC LIBRARY & BACK		20
REC'D. BY. J. Collins		TOTAL →	5	00
DATE		APPROVED		

PLAINTIFFS' REBUTTAL AFFIDAVIT TO DEFENDANTS' MOTION TO DISQUALIFY
(pp. 181a-189a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

76 Civ. 2001 (R.J.W.)

COOK INDUSTRIES, INC. and COOK AND COMPANY,

REBUTTAL AFFIDAVIT

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FREDERICK W. MEEKER, being duly sworn, deposes and says:

That I am an attorney associated with Delson & Gordon, attorneys for plaintiffs, and submit this affidavit in rebuttal to the new matter submitted with the defendants' reply affidavit on this motion to disqualify the firm of Delson & Gordon from acting as counsel for plaintiffs.

At the outset, it should be noted that neither the reply affidavit nor the moving affidavit contains any evidence to support defendants' burden on a motion of this type, which is to show that I, in my prior representation of defendants, had access to any of defendants' confidential information; that such confidential information would be of value in the present litigation; or that in actuality, the prior litigation and the present litigation have such direct links as to be in effect the same. These are the criteria set forth in the authorities cited in plaintiffs' memorandum. The defendants not only fail to meet any of these criteria but they do not even allege that such elements exist.

The reply affidavit submits the bill rendered by the Hill, Rivkins firm to defendants in the soybean case. The Court will note that this bill is dated April 22, 1976, about a month after I left the Hill, Rivkins firm. The bill sets forth in minute detail every step taken in connection with the soybean litigation during the three years it was pending. A reading of the bill substantiates every statement made by me in my prior affidavit. It demonstrates that the issue as to the loading of the soybeans was not actively contested; the weight certificates were accepted without question by the parties; and

that the bulk of my time was spent on the arbitration motions and summary judgment motion. There was no discovery of Cook, no interview with Cook's witnesses and no investigation. The principal issue in that case related to the amount of shrinkage during transit, not any issue of Cook's deliberate short-weighing and misgrading of grain at loading.

I had not recalled my letter of September 26, 1973 to Mr. Reams requesting that he put me in touch with Cook personnel. I have no recollection that Mr. Reams furnished the name of any Cook employee at Reserve, and I am reasonably certain that I had no contact with any Cook personnel at Reserve. Mr. Friedman's vague references to handwritten notes in the Hill, Rivkins' file where he states that the name of one Cook employee appears, cannot form the basis of disqualification as it is clear from what Mr. Friedman does not say, that I did not interview this one employee or obtain any confidential information from him. The vague reference to notes of a telephone conversation, again, is inadequate to substantiate defendants' burden of showing that I obtained confidential information or had access to confidential information.

It should be obvious to the Court that the Hill, Rivkins' file is in the possession of defendants and I do not

have access to it. It should be self-evident that if in fact that file discloses that I had received any confidential information (which I am certain I did not receive), an affirmative statement to that effect would have been included in the reply affidavit.

The coyness of Mr. Friedman and the marked reticence of Mr. Reams in not coming out and actually alleging that a confidence was revealed to me speaks volumes. They would have this Court extrapolate the current case law to hold that a confidence will be found where none is even alleged and thus open the door to grave abuses of Canon Four.

The "one particular significant act" which Mr. Friedman emphasizes is the fact that on July 8, 1975, I obtained copies of six back-issues of the New York Times containing references to the grain scandal. Obviously, these articles did not contain any of Cook's confidential information. I did not obtain these clippings because of any possible relationship to the then concluding soybean matter. These articles had no relevance to any contested issue in that case. As I recall it, I obtained these articles

at the request of Mr. Reams. I told Mr. O'Brien of Mr. Reams' request and I had a messenger pick up the newspapers. While I do not recall if I sent the articles to Mr. Reams, I assume that in due course, they were sent along.

Mr. Friedman also seeks to make much of the fact that Cook was billed $7,500 for services rendered in the soybean matter. The Court will recognize that this matter was pending for a period of three years and the review of the bill and docket indicates the various motions which were made and steps taken. I believe that my time was billed at $75 per hour. I am not familiar with how much time Mr. O'Brien spent on this matter. Nor am I familiar with the basis on which the bill was rendered, i.e., whether the bill was computed on a time basis or on the basis of a successfully completed matter.

All matters assigned to me at the Hill, Rivkins firm were not handled on a time or result basis. About 90% of the matters assigned to me were on a contingent fee basis and in these matters, fees, when earned, could be either substantially more or substantially less than time spent, and many matters resulted in no fees at all.

The bill in this matter does not by itself indicate that the case was anything but a routine cargo matter in which

the motions referred to in the bill were made and a successful result to the client was achieved.

In sum, Mr. Friedman's reply affidavit contains nothing substantially different from that presented to the Court in his moving affidavit. In neither case is there even an allegation that I received or had access to any of Cook's confidential information. The fact is that I was not privy to any of Cook's confidences.

Defendants attempt to seize upon the most superficial similarity in the language of the pleadings of the soybean case and the present case without looking to the reality of the actual issues presented by the litigation. In actuality, there is no substantial relationship between the two matters. The first was a routine cargo claim. The present case is an action based upon the defendants' intentional and deliberate short-weighing and misgrading of wheat shipped to India, which is expressly alleged in the first cause of action on a contract theory and in the second cause of action on a fraud theory. In the soybean case, the issue actually contested was the shrinkage in transit, all parties having accepted the weight at loading. In the present case, the actual issue is the deliberate short-weighing and misgrading at loading. (Paragraphs 10 and 11)

In the soybean case, the plaintiffs alleged in the complaint against the carrier that the carrier received the full weight as shown in the shipping documents and the case involved only one shipment. In the present case, the charge is that the defendants knowingly short-weighed hundreds of shipments over a long period of time pursuant to an intentional scheme practiced by the defendants in a pattern of fraud and deceit, which have been the subject of a criminal indictment and conviction of the defendant.

In the District Court opinion in Silver Chrysler, 370 F.Supp. 581 (1973) aff'd 518 F2d 751 (2d Cir. 1975), the court recognized the need for applying the drastic remedy of disqualification only where all of the essential elements for invoking it were found to exist, especially in the light of "the continual modification of the practitioner's ethical, social and political roles in our society". The court went on to say (at p. 589):

> "Rules appropriate in guiding lawyers of several decades ago must be applied in light of current realities. See Note, Unchanging Rules in Changing Times: The Canons of Ethics and Intra-firm Conflicts of Interest, 73 Yale L.J. 1058 (1964). As the author of the Yale Note perceptively points out (at 1069), the rigid rule of total disqualification is premised in the day when firms, when they existed, were very small--also a day when attorneys most frequently could think of their activities in terms of discrete 'matters'. Increasingly, neither condition maintains."

While even the more rigid rules would not require disqualification in the present case in view of the defendant's failure even to allege the existence of the required elements, it is even more obviously improper to invoke the drastic remedy of disqualification in the instant case in the light of the needs of a changing society, where both the future of young associates, such as myself, and the interests of the client, the Government of India, in retaining counsel of their own choice might be jeopardized if social and legal realities were ignored.

This motion should be denied in all respects since there is no showing of any of the following essentials:

(a) That my "actual activity" was such as to "make it reasonable to infer that [I] gained some information about [my] former client of some value to [my] present client". Silver Chrysler v. Chrysler Motor Corp., 370 F.Supp. 581 at 589.

(b) That the "link between the subject matter of the first litigation or first representation by defendant counsel and the second adverse litigation was comparatively simple to detect--the same accident, the same documents, the same litigation, etc.". U.S. v. Standard Oil Company, 136 F.Supp. 345, 355-356.

(c) That in my prior engagement, I had obtained and therefore "should preserve the confidences and secrets of a client". Canon 4

Defendants' motion should be denied in all respects.

Frederick W. Meeker

Sworn to before me this
24th day of August, 1976.

MARVIN SRULOVITZ
NOTARY PUBLIC, State of New York
No. 02-4500315
Qualified in Rockland County
Commission Expires March 30, 1977

STIPULATION AND ORDER EXTENDING DEFENDANTS' TIME TO MOVE OR ANSWER THE COMPLAINT TO NOVEMBER 1, 1976 (pp. 190a-191a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA, Plaintiffs, - against - COOK INDUSTRIES, INC. and COOK AND COMPANY, Defendants.	STIPULATION 76 Civ. 2001 (R.J.W.)

IT IS HEREBY STIPULATED AND AGREED, by and between Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants, and Delson & Gordon, attorneys for plaintiffs that:

(a) the time within which defendants may move, answer or otherwise respond to the Summons and Complaint in this action is hereby extended to and including November 1, 1976; and

(b) neither plaintiffs nor defendants shall commence discovery, move or otherwise proceed in connection with this action prior to November 1, 1976; provided, however, that nothing herein shall prevent (i) plaintiffs or defendants from seeking leave of the Court to conduct discovery and other proceedings incident to defendants' motion to disqualify Delson & Gordon as counsel for the plaintiffs or from opposing any such application to conduct discovery or other proceedings, and (ii) plaintiffs from seeking leave of the Court to serve

an amended complaint or defendants from opposing any such application by plaintiffs.

Dated: New York, New York
September 30, 1976

DELSON & GORDON

By _____
A Member of the Firm
Attorneys for Plaintiffs

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By _____
A Member of the Firm
Attorneys for Plaintiffs

SO ORDERED:

_____
U.S.D.J.

STIPULATION AND ORDER EXTENDING DEFENDANTS' TIME TO MOVE OR ANSWER THE COMPLAINT TO DECEMBER 1, 1976 (pp. 192a-193a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA, Plaintiffs, - against - COOK INDUSTRIES, INC. and COOK AND COMPANY, Defendants.	STIPULATION 76 Civ. 2001 (R.J.W.)

IT IS HEREBY STIPULATED AND AGREED, by and between Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants, and Delson & Gordon, attorneys for plaintiffs, that:

(a) the time within which defendants may move, answer or otherwise respond to the Summons and Complaint in this action is hereby extended to and including December 1, 1976; and

(b) neither plaintiffs nor defendants shall commence discovery, move or otherwise proceed in connection with this action prior to December 1, 1976; provided, however, that nothing herein shall prevent plaintiffs or defendants from seeking leave of the Court to conduct discovery and other proceedings incident to defendants' motion to disqualify Delson & Gordon as counsel for the plaintiffs or from opposing

any such application to conduct discovery or other proceedings.

Dated: New York, New York
October 28, 1976

DELSON & GORDON

By _____
A Member of the Firm
Attorneys for Plaintiffs

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON

By _____
A Member of the Firm
Attorneys for Defendants

SO ORDERED:

_____
U.S.D.J.

MEMO ENDORSED ON MOTION PAPERS

Clerk's File No. 76 Civ. 2001 (R.J.W.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

- against -

COOK INDUSTRIES, INC. and COOK AND COMPANY,

Defendants.

U.S. DISTRICT CO. FILED NOV 19 '76 S.D. OF N.Y.

ORIGINAL

NOTICE OF MOTION
AND
AFFIDAVIT

COPY RECEIVED
AUG 5 1976
DELSON & GORDON
ATTORNEYS FOR

MICROFILM
NOV 19 1976

Fried, Frank, Harris, Shriver & Jacobson
Attorneys for Defendants

120 Broadway
New York, N.Y. 10005
(212) 964-8500

Motion granted in accordance with opinion filed herewith.

Dated: November 19, 1976

Robert J. Ward
U. S. D. J.

OPINION OF JUDGE WARD ON DISQUALIFICATION MOTION
(pp. 195a-210a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THE GOVERNMENT OF INDIA and
THE FOOD CORPORATION OF INDIA, :

Plaintiffs, : OPINION

-against- : 76 Civ. 2001

COOK INDUSTRIES, INC. and :
COOK AND COMPANY,

Defendants. :

----------x

A P P E A R A N C E S

DELSON & GORDON
230 Park Avenue
New York, New York 10017
Attorneys for Plaintiffs

ROBERT DELSON, ESQ.
NORMAN MOLOSHOK, ESQ.
ALVIN H. MEADOW, ESQ.
Of Counsel

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
120 Broadway
New York, New York 10005
Attorneys for Defendants

VICTOR S. FRIEDMAN, ESQ.
JEFFREY M. SIGER, ESQ.
Of Counsel

WARD, J.

Defendants Cook Industries, Inc. and Cook and Company ("Cook") move to disqualify the law firm of Delson and Gordon and Frederick W. Meeker, an associate in the firm, from continuing to represent plaintiffs in this action. For the reasons hereinafter discussed, the disqualification motion is granted.

I. The Basis of the Present Action

The Government of India has purchased grain from Cook for a number of years. During 1975 and 1976, substantial publicity implicated Cook in a "grain scandal" involving alleged deliberate short-weighing and issuing of false inspection certificates whereby the grain actually shipped by Cook and other sellers was of less quantity and/or quality than indicated on the bills of lading and weight certificates. Ultimately Cook was indicted for its alleged roll in the fraudulent scheme and pleaded nolo contendere to this indictment.

Subsequent to the public disclosures, on May 3, 1976 Delson and Gordon, on behalf of the Government of India and The Food Corporation of India ("Government of India"), filed a complaint[1] in this Court against Cook, alleging breach of contract and fraud in the delivery of grain of "inferior and . . . lesser value than the grain specified in the respective contracts in that they were short weight, of lower grade and quality, and were infested or contaminated." Complaint ¶9. Plaintiffs ask for at least $25,500,000 compensatory damages and

$10,000,000 punitive damages, plus interest, costs and disbursements.

II. The Prior Actions

Defendants' motion to disqualify Delson and Gordon, the Government of India's general counsel in the United States, and its associate attorney Mr. Meeker, from this multi-million dollar suit against Cook is based upon Mr. Meeker's defense of two similar claims against Cook just prior to his employment at Delson and Gordon.

Upon graduation from law school in 1972, Mr. Meeker became associated with Hill, Rivkins, Carey, Loesberg and O'Brien ("Hill, Rivkins"), a twenty-two member law firm specializing in admiralty law. In 1973, Mr. Meeker was assigned to defend two actions against Cook. Shui Fa Oil Mill Co., Ltd. et al. v. M/S "Norma" & Austin Navigation Corp. Ltd. v. Cook Industries, Inc., 73 Civ. 250 and Shui Fa Oil Mill Co., Ltd. et al. v. Cook Industries, Inc., 73 Civ. 251 (hereinafter "Soybean Actions").[2]

The Soybean Actions arose out of an alleged breach of contract wherein a shipment of soybeans to plaintiffs was 254 tons short of the amount listed on the bills of lading and weight certificates.[3] Plaintiffs, alleging that they did not know whether the shortage was caused by Cook or the carrier, instituted one action against the carrier and a separate action against Cook. The carrier impleaded Cook and alleged that if

there was a shortage it was due to Cook. The two actions were consolidated, and on February 20, 1976 the claims against the carrier and Cook were dismissed. Mr. Meeker commenced his association with Delson and Gordon on April 5, 1976 and was immediately assigned to this case in which the complaint was filed on May 3, 1976.[4]

III. The Law

The law is clear that if the former action and the present action are "substantially related" and the attorney's involvement in the former case was more than peripheral,[5] then there is an irrebuttable presumption that the attorney had access to confidential information. Silver Chrysler Plymouth v. Chrysler Motors Corp., 518 F.2d 751, 756-57 (2d Cir. 1975); see The NCK Organization Ltd. v. Bregman, Dkt. No. 76-7075 (2d Cir. Sept. 7, 1976), at 5462-66; Note, The Second Circuit and Attorney Disqualification - Silver Chrysler Steers In A New Direction, 44 Fordham L. Rev. 130 (1975). In other words, should the Court determine that there is a substantial relation between the two actions, then it will not require the movants to come forward with proof that Mr. Meeker had access to confidences,[6] nor will it give any weight to Mr. Meeker's vehement assertions that he did not have access to and does not now possess confidential information about Cook. See T.C. Theatre Corp. v. Warner Bros. Pictures, Inc., 113 F. Supp. 265, 268-69 (S.D.N.Y. 1953); accord, The NCK Organization Ltd., supra at 5465-67; Dell v. Celanese Corp., 513 F.2d 568, 572 (2d Cir.

1975); Motor Mart, Inc. v. Saab Motors, Inc., 359 F. Supp. 156, 157 (S.D.N.Y. 1973). Furthermore, if a substantial relationship is established, the presumption of access to confidences prevails even though the "confidential" information may be publicly available. The NCK Organization Ltd., supra at 5463-64; Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562, 572-73 (2d Cir. 1973); United States v. Standard Oil Co., 136 F. Supp. 345, 348 (S.D.N.Y. 1955). The rationale for this irrebuttable presumption is that to allow the litigants, attorneys and Court to become embroiled in a controversy over whether confidences have been reposed and whether the attorney is consciously or subconsciously making use of such confidences would thwart Canon 4's[7] ultimate objective of promoting an attorney-client relationship of trust and candor through preservation of clients' and former clients' confidences. Emle Industries, Inc., supra at 570-71; Standard Oil Co., supra at 355; T.C. Theatre Corp., supra at 269.

The issue before this Court, then, is whether the former and present actions against Cook are substantially related. To determine this

> the Court must ask whether it can reasonably be said that in the course of the former representation the attorney might have acquired information related to the subject of his subsequent representation. If so, then the relationship between the two matters is sufficiently close to bring the later representation within the prohibition of Canon [4].
> T.C. Theatre Corp. v. Warner Bros. Pictures, Inc., supra at 269 (emphasis added).

Thus, if Mr. Meeker might have acquired related information, then the matters are substantially related and he and Delson and Gordon must be disqualified. Standard Oil Co., supra at 350 n. 4, 360. See also Laskey Bros. v. Warner Bros. Pictures, Inc., 224 F.2d 824, 826 (2d Cir. 1955).

A. Are the Matters Substantially Related?

Mr. Meeker and Delson and Gordon strenuously argue that although the instant action and the former actions are superficially similar inasmuch as they each relate to alleged shortages by Cook at its grain elevator in Reserve, Louisiana, "in reality" they are unrelated because, they claim, the alleged shortage in the Soybean Actions was never actively litigated; consequently, Mr. Meeker did not have occasion to investigate Cook's loading procedures or conduct anything more than minimal discovery. This argument addresses the critical issue. However, a thorough examination of the entire record in the Soybean Actions leads this Court to reject Mr. Meeker's assertion that all parties accepted the bills of lading and weight certificates as dispositive of the quantity of soybeans actually loaded onto the ship, obviating discovery.

(1) The issue of the validity and accuracy of the documents was impliedly raised by the complaint,[8] was clearly raised by the amended third-party complaint,[9] and was actively contested by plaintiffs and third-party plaintiff in opposing Cook's motion for summary judgment.[10] In addition, Mr. Meeker

is clearly inaccurate in contending that the third-party plaintiff's answer to the Notice to Admit constituted an admission of the accuracy and validity of the documents. Request #2 asked the third-party plaintiff to admit only "[t]hat the copies of the weight certificates . . . are true copies of such certificates." The response to that request was that "defendant and third-party plaintiff did not weigh the cargo in question and, while having received copies of the certificates . . . can neither admit nor deny the accuracy of the contents of said certificates at this time." (Emphasis added). Request #3 asked for an admission "[t]hat the copies of the loading invoices . . . are true copies of such invoices." Third-party plaintiff admitted that the invoices were rendered to S/S Norma "but can neither admit nor deny the accuracy of the content of said invoices." (Emphasis added). Request #4 asked for an admission "[t]hat the copies of the bills of lading . . . are true copies of the originals. . . ." The third-party plaintiff denied that the exhibits were true and complete copies of the original bills of lading. Thus, it is clear that the accuracy and validity of the documentary evidence was not admitted.

It is true that plaintiffs and third-party plaintiff did not present any proof to rebut the documents offered by Mr. Meeher, and in this sense the issue was not actively contested. However, this does not change the fact that the valid-

ity and accuracy of the bills of lading and weight certificates had been an issue and Mr. Meeker had to be prepared to meet that issue, i.e., he had to anticipate the proof his adversaries would attempt to adduce. The fact that ultimately no evidence was adduced by his adversaries does not prove that Mr. Meeker did not investigate Cook's loading and weighing procedure to make sure that there was no merit to the allegation. Thus, the Court concludes that it is reasonable to assume that Mr. Meeker might have conducted at least a limited investigation into Cook's weighing and loading procedures and thus might have had access to confidential information.[11]

(2) Other than the documents themselves, the only evidence Mr. Meeker introduced on the issue of the accuracy and validity of the weights shown upon the documents was an affidavit of Mr. Willis, Chief Weighmaster of the Destrehan Board of Trade. The affidavit stated in part that Mr. Willis "personally supervised the weight certification . . . and can state that an official licensed weigher of Destrehan was at all times on hand to ensure the correctness of the weight certifications." The affidavit further states: "It is my personal belief that the weight certificates for soybean cargo loaded aboard the M.V. Norma . . . accurately reflect the true amount of grain loaded aboard that vessel." (Emphasis added). Thus, the Court notes, Mr. Meeker inexplicably chose to offer the Chief Weighmaster's "personal belief" rather than obtain

an affidavit from Mr. Duffy, the licensed weigher who actually weighed the soybeans and signed the certificates. It is reasonable to assume that Mr. Meeker conducted some investigation or inquiry before deciding to obtain Mr. Willis', and not Mr. Duffy's, affidavit.[12]

(3) In addition to the possibility that Mr. Meeker may have done some investigating, he also maintained contact with Mr. Reams, general counsel to Cook, and had occasion to speak with Mr. Reams' colleague, Mr. Ireland.[13] Mr. Meeker admits having consulted with Mr. Reams concerning his (Mr. Meeker's) intention to contact Mr. Willis (the Chief Weighmaster), and it is reasonable to assume that Mr. Meeker may have obtained other information from Mr. Reams and Mr. Ireland as well. For example, on September 26, 1973, Mr. Meeker wrote Mr. Reams: "We should greatly appreciate your putting us in touch with people from Cook at Reserve who might have records or recollections of the details of the loading so that we might investigate it further." Although Mr. Meeker has forgotten his having made this request and claims nothing came of it, the movants allege that handwritten notes in Hill, Rivkins' file indicate that Mr. Meeker did obtain the names of two Department of Agriculture employees and a Cook employee and obtained information from the latter.[14] Without reaching the question of whether or not Mr. Meeker conducted discovery of or actually communicated with Cook employees,[15] the Court finds

that Mr. Meeker's contact with Mr. Reams, Cook's general counsel, and his colleague, Mr. Ireland, was equivalent to contact with Cook itself insofar as it provided a similar opportunity for access to confidential information.

(4) Lastly, Mr. Meeker claims that while at Hill, Rivkins he worked on about 1,000 cases and at any one time had about 350 cases to handle, most of which were cargo claims that were disposed of on the basis of documents. Although the Soybean Actions may have been two of hundreds of routine cargo claims handled by Mr. Meeker, in light of the foregoing discussion the Court cannot infer that there was no time or need for Mr. Meeker to investigate the claims in the Soybean Actions.

B. Conclusion

The Court is not unmindful that disqualification may affect Mr. Meeker's career opportunities. In addition, Delson and Gordon stand to lose substantial legal fees as a result of disqualification from this multi-million dollar action. Further, the Court recognizes that disqualification will cost the Government of India time and money by having to retain new counsel who will have to familiarize themselves with the months of investigation that allegedly have already been conducted. In addition, the Government of India, in being deprived of its right to select its own counsel, may lose the benefit of whatever specialized knowledge of its operations

Delson and Gordon may have acquired over the years of its representation of its longtime client. Furthermore, this Court recognizes that disqualification motions are frequently made by defense counsel for dilatory purposes only. Nonetheless, legal precedent clearly requires disqualification in this case. Compare Emle Industries, Inc., supra; Motor Mart, Inc., supra.

Prior cases have balanced the interests of the attorney, his new law firm, the present client, the former client and the public and have concluded that the balance must be drawn in favor of the former client's and public's interest in preservation of confidences and appearance of propriety. Silver Chrysler, supra at 757; Hull v. Celanese Corp., supra at 571; Emle Industries, Inc., supra at 565, 570-71, 575; Motor Mart, Inc., supra at 158; Consolidated Theatres, Inc., supra at 926; Standard Oil Co., supra at 364. But see Note, The Second Circuit and Attorney Disqualification, supra (after Silver Chrysler, courts should use the substantially related test rather than the broad appearance of impropriety test).

After considering all of the foregoing factors, this Court has determined to grant defendants' motion. Accordingly, Delson and Gordon and Frederick W. Meeker are disqualified. Plaintiffs are directed to designate substituted counsel within thirty days of the date of this decision.

It is so ordered.

Dated: November 19, 1976

Robert J. Ward
U. S. D. J.

NOTES

1 Delson and Gordon, on behalf of Government of India, brought similar actions in this Court against four other defendants as well. The Government of India et al. v. Cargill Inc., 76 Civ. 1998; The Government of India et al. v. Continental Grain Co., 76 Civ. 1999; The Government of India et al. v. Peavey Co., 76 Civ. 2000; The Government of India et al. v. Louis Dreyfus Corp., 76 Civ. 2002. A motion to consolidate these actions is pending before Judge Charles H. Tenney.

2 Although a partner was also assigned to these cases, from Mr. Meeker's description of what he himself did it is apparent that Mr. Meeker was in day-to-day charge of the cases. Moreover, no assertion is made to the contrary.

3 There was also a claim that some of the soybeans sustained water damage in transit, but that claim ultimately was not submitted to the Court.

4 On May 3, 1976, Mr. Meeker notified Mr. Reams, general counsel to Cook, that he was now associated with Delson and Gordon and was working on this suit. Mr. Reams did not object to Mr. Meeker's new firm prosecuting this case. However, since Fried, Frank, Harris, Shriver and Jacobson ("Fried, Frank"), and not Mr. Reams' firm, are attorneys of record for Cook in this case, Fried, Frank has an obligation to raise this issue so as to prevent any possible adverse consequences to its client. Accordingly, even if Mr. Reams' failure to object to Mr. Meeker's association with this case were to be construed as a waiver, it would not preclude this Court's examination of the alleged conflict of interest. Cf. Empire Linotype School, Inc. v. United States, 143 F. Supp. 627, 631 (S.D.N.Y. 1956) ("The Court's duty and power to regulate the conduct of attorneys practicing before it, in accordance with the Canons, cannot be defeated by the laches of a private party or complainant. Thus, the Court, on its own motion, may disqualify an attorney for violation of the Canons of Ethics.")

In addition, Delson and Gordon argue that the 2 1/2-month delay between notification to Mr. Reams (May 3, 1976) and the return date of this motion (August 24, 1976) is unreasonable and worked a further hardship on Delson and Gordon which continued to prosecute this case diligently during that period. Although the Court recognizes the

inconvenience, if not hardship, to Delson and Gordon, it does not impute Mr. Reams' knowledge to Fried, Frank. Rather, it finds that Fried, Frank first learned of the situation on July 19, 1976 and on July 21, 1976 requested Delson and Gordon to withdraw. On July 28, 1976, Delson and Gordon declined to withdraw, so on August 9, 1976, Fried, Frank filed this motion to disqualify, returnable August 24, 1976. The Court finds the delay entirely reasonable; therefore, there has been no laches. See Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562, 574 (2d Cir. 1973) (three-year delay is not unreasonable). Moreover, laches is normally not a defense to a motion to disqualify. Emle, supra; Empire Linotype, supra.

5 There can be no doubt that Mr. Meeker's involvement was more than peripheral since he conducted the defense of the Soybean Actions. See Note 2, supra. Thus, Mr. Meeker's role as an associate on the Soybean Actions is clearly distinguishable from the peripheral role of some "Wall Street" firm associates as described in Silver Chrysler Plymouth v. Chrysler Motors Corp., 518 F.2d 751, 756-57 (2d Cir. 1975).

6 Accordingly, the Court declines to inspect Fried, Frank's in camera submissions which allegedly contain confidential information to which Mr. Meeker had or has access. But see United States v. Standard Oil Co., 136 F. Supp. 345, 358-59 (S.D.N.Y. 1955) (Kaufman, J.). See also Consolidated Theatres, Inc. v. Warner Bros. Circuit Management Corp., 216 F.2d 920, 926 (2d Cir. 1954).

7 ABA Code of Professional Responsibility Canon 4 (1975).

8 Paragraph 7 of the complaint states:

> Plaintiffs are unable to determine whether defendants or other defendants to be named in a companion civil action are responsible for the damage and shortage of said cargo.

9 Paragraph 18 of the Amended Third-Party Complaint states:

> [I]f the plaintiffs' cargo suffered any loss or damage as alleged in the Complaint, which is denied, such loss or damage was occasioned solely by the failure of the third-party defendant, as shipper, its agents or servants,

to furnish cargo of the quantity and weight specified in the bills of lading.

10 The plaintiffs' Statement Pursuant to Rule 9(g) states:

> Plaintiffs herein contend that there is a genuine issue of fact as to the actual amount of cargo delivered by Cook Industries Inc. to the vessel "Norma" at Reserve, La., in January 1972.

The third-party plaintiffs' Statement Pursuant to Rule 9(g) alleges that factual questions existed as to the quantity of soybeans loaded in the elevator, the quantity loaded on the vessel, and the quantity remaining in the elevator after the vessel was loaded. Additionally, counsel's accompanying affidavit states at 4-5:

> [Mr. Meeker] . . . in paragraph 14 of his moving Affidavit [for summary judgment alleges] that "if any shortage was listed at outturn, it is . . . the fault of the carrier for fraudulent bills of lading" . . . . The reference to the so-called "fraudulent bills of lading" can only be interpreted in one manner, namely, that the bills of lading reflect a greater quantity thereon than actually loaded to the vessel.
>
> In passing, it is to be noted that the quantity allegedly loaded to the vessel and reflected in the bill of lading was furnished by Cook . . . . Any fraud which may be present originated, therefore, with Cook or its agents. Austin's stevedore merely loaded, stowed and trimmed the cargo; it did not weigh it.
>
> Thus, in two (2) instances in his moving Affidavit, Cook's counsel alludes to the possibility that a quantity less than specified in the bills of lading could have been loaded to the vessel, and it is important to note that the grain in question was supplied by Cook to Bayside Elevator Co. at Reserve, Louisiana for loading (paragraph 9 of the Meeker Affidavit), but that no evidence of the quantity supplied or of the quantity remaining in the grain elevator on completion

of loading attends the moving papers.

(some emphasis in original; some emphasis supplied).

Judge Stewart denied the summary judgment motion because the moving affidavits were not based on personal knowledge. He did not reach the question of whether there were any material issues of fact, but stated:

> Since the primary issue in this case appears to be the weight of the soybeans when they were loaded onto the M/S Norma, the affidavits of Messrs. Meeker and Willis are not sufficient, since they were undoubtedly not present when the soybeans were weighed and loaded. (Emphasis added).

11 In light of this conclusion, the Court finds no merit in Delson and Gordon's related argument that there is no substantial relationship because the Soybean Actions involved a run-of-the-mill breach of contract, a "routine cargo claim," whereas the present case involves allegations of wilfull, fraudulent misconduct. This argument misses the point; the issue is whether Mr. Meeker might have conducted an investigation which might have given him access to confidential information related to the present suit. As discussed above, the Court concludes that the normal course of preparation may have required him to conduct an investigation even though he was defending against breach of contract rather than fraud.

12 The Court notes in passing that the indictment to which Cook pleaded nolo contendere contains a schedule of alleged shortweighings. On that schedule, Mr. Duffy, the licensed weigher who signed the weight certificates in the soybean cases, is listed as the licensed weigher of one of the alleged shortweighings enumerated in the indictment. Although the indictment was filed after the Soybean Actions were concluded, it is reasonable to assume that Mr. Meeker may have come by some information about Mr. Duffy that led him to decide to bypass this most appropriate witness. In this regard, the Court also notes that Mr. Meeker was aware of the "grain scandal" at least as early as July 1975 when he sent a message to obtain seven back issues of The New York Times containing front page stories on the grain scandal.

...

13 Mr. Meeker does not deny that he had contact with Mr. Ireland as alleged in Mr. Friedman's Reply Affidavit at ¶8.

14 Friedman's Reply Affidavit ¶¶ 12-14.

15 The Court does note, however, that Mr. Meeker billed Cook for "full pre-trial discovery and inspection" and for "conferring with counsel for Austin Navigation Corp., and requesting information as to the loading procedure at Reserve Port of Loading as well as the names of Cook's personnel at the loading port." Moreover, the record in the Soybean Actions indicates that the third-party plaintiff served Cook with a Notice of Examination Before Trial. There is no indication whether the examination took place, so the Court accepts Mr. Meeker's statement that "[t]he other parties to the litigation did not conduct any discovery of Cook although a notice to take Cook's deposition was served." However, the fact that the deposition did not occur does not prove that Mr. Meeker did not prepare himself and Cook for the deposition.

STIPULATION AND ORDER MODIFYING ORDER OF COURT REQUIRING SUBSTITUTION OF PLAINTIFFS' COUNSEL (pp. 211a-213a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

U.S. DISTRICT COURT FILED DEC 14 1976 S.D. OF N.Y.

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

COOK INDUSTRIES, INC. and COOK AND COMPANY,

Defendants.

- x

STIPULATION & ORDER

76 Civ. 2001 (R.J.W.)

WHEREAS, an order of this Court, dated November 19, 1976, disqualifies Delson & Gordon as attorneys for plaintiffs and directs plaintiffs to designate substitute counsel within thirty days of the date of the order (the "November 19, 1976 Order"), and

WHEREAS, the Court has advised Delson & Gordon that the Court would grant plaintiffs a modification of the November 19, 1976 Order, in the form set forth at subparagraph 2(a) hereto, so as to permit Delson & Gordon to maintain any appeal therefrom,

IT IS HEREBY STIPULATED AND AGREED, by and between Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendants, and Delson & Gordon, attorneys for plaintiffs, that:

(1) In the event plaintiffs do not appeal from the

MICROFILM DEC 1...

November 19, 1976 Order,

(a) the time within which defendants may move, answer or otherwise respond to the Summons and Complaint in this action is extended to and including February 4, 1977; and

(b) Delson & Gordon shall take no action whatsoever which is related in any way to the prosecution of any claims against defendants regarding or relating to any matters asserted in the Complaint, and neither plaintiffs nor defendants shall commence discovery, move or otherwise proceed in connection with this action prior to February 4, 1977; provided, however, that nothing herein shall prevent plaintiffs from designating substitute counsel to represent them in this action.

(2) In the event that plaintiffs appeal from the November 19,1976 Order,

(a) the November 19, 1976 Order is hereby modified to provide that the time for the plaintiffs to designate substitute counsel shall be sixty (60) days after the final determination or dismissal of any such appeal,

(b) the time within which defendants may move, answer or otherwise respond to the Summons and Complaint in this action is extended to and including seventy (70) days after the final determination or dismissal of any such appeal; and

(c) subject, of course, to the November 19, 1976 Order being finally set aside, Delson & Gordon shall take no action whatsoever which is related in any way to the prosecution

of any claims against defendants regarding or relating to any matters asserted in the Complaint, and neither plaintiffs nor defendants shall commence discovery, move or otherwise proceed in connection with this action prior to 70 days after the final determination or dismissal of any such appeal; provided, however, that nothing herein shall prevent plaintiffs through Delson & Gordon or other counsel from prosecuting any such appeal or defendants from opposing any such appeal.

Dated: New York, New York
December 8, 1976

DELSON & GORDON

By _____
A Member of the Firm
Attorneys for Plaintiffs

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By _____
A Member of the Firm
Attorneys for Defendants

SO ORDERED: 12/13/76

_____
U.S.D.J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA,

Plaintiffs,

-against-

COOK INDUSTRIES, INC. and COOK AND COMPANY,

Defendants.
----------x

76 Civ. 2001 (RJW)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that THE GOVERNMENT OF INDIA and THE FOOD CORPORATION OF INDIA, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the Order dated and entered on November 19, 1976 in this action disqualifying the law firm of DELSON & GORDON and FREDERICK W. MEEKER, an associate therewith from continuing to represent the plaintiffs in this action.

Dated: New York, New York
December 13, 1976

DELSON & GORDON
Attorneys for Plaintiffs

By _____
Alvin H. Meadow
A Member of the Firm
230 Park Avenue
New York, N.Y. 10017
(212) 686-8030

TO:
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
Attorneys for Defendants
120 Broadway
New York, N.Y.
(212) 964-6500

****

THE DISTRICT COURT RELIED UPON THE ENTIRE RECORD IN THESE CASES AND PORTION OF THE RECORD IS REPRODUCED BY AGREEMENT.

DOCKET ENTRIES

(pp. 221a-225a)

THIS ACTION CONSOLIDATED WITH 73-251 FOR ALL PURPOSES, STEWART, J.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

TITLE OF CASE

SHUI FA OIL MILL CO., LTD., HUEY FENG OIL MILL CO., LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN TI OIL INDUSTRY CO. LTD., KING TAI JH OIL FACTORY CO. LTD. & KING TAI YI TRADING CO.LTD.,

Plaintiffs.

-VS-

M/S "NORMA", her engines, boilers, etc.,

-VS-

AUSTIN NAVIGATION CORP., LTD.

Dfts. & Third Party Pltffs.

-VS-

COOK INDUSTRIES, INC.,

Third Party Defendant

ATTORNEYS

For plaintiff: Bigham Englar Jones & Houston
99 John Street
NYC 10038
BE 3-4646

For defendant & third party pltff Austin Nav. C
Douglas J. Cannon [illegible] Calleggino & Chaffra
[illegible] NYC 10005 (785-7100)

For 3rd pty defdt:

Hill, Rivkins, Carey, Loesberg & O'Brien
25 Fulton St. NYC 10038 BE 3-6171
(3rd-pty deft. Cook Indus. Inc.)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J. 5 mailed x	Clerk	1/16/73	Bigham, E.	NT	
J. 6 mailed ✓	Marshal	1/19/73	U.S. Marshal		NT
Basis of Action: Admiralty, Breach of Contract. $36,000.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

Shui Fa Oil Mill Co. Ltd. et al. vs. M/S "Norma"her engines,etc.,

JUDGE ST

Judgment N. 25

DATE	PROCEEDINGS
an 16.73	Filed Complaint issued summons.
n 24.73	Filed Summons and marshals ret. Served: Eddie's Shipping Agency Inc. on 1/18/73.
-18-73	Filed ANSWER of deft. to complaint.
-18-73	Filed Third Party Complaint by Austin Navigation Corp., Ltd.
ug.17.73	Filed Summons and Marshal's return served on Cook Industries, Inc., Zambito, dtd 7/18/73
Dec.7-73	Filed consent order consolidating this action with 73-251 for all purposes under the following title; Shui Fa Oil Mill Co.,Ltd.et al ,pltf. vs MS Norma,her engines,etc. deft. and Austin Navigation Corp.,Ltd. deft. & 3pty. pltf. vs. Cook Industries Inc. 3pty. deft. Stewart, J.
.7-74	Filed 3pty. deft. request for admissions.
.14-74	Filed 3pty deft. affdt. and notice of motion for an order dismissing action ... ret. Feb. 13, 1974.
an.14-74	Filed 3pty ... memorandum of law in support of above motion.
an.21-74	Filed deft ... pltfs. interrog. to pltfs.
eb.1-74	Filed for Deft. / 3rd Pty Pltff. Answers to Request for Admissions.
Mar.1-74	Filed pltfs. affdt. of Daniel A. Sullivan in opposition to motion of 3pty deft. for summary judmgnet dismissing compalnt and 3pyt. complaint.
Mar.1-74	Filed ptlfs. memorandum of law in opposition to motion for summary judgment.
Mar.5-74	Filed deft. and 3pty. pltf. statement pursuant to Rule9(g).
Mar.5-74	Filed deft. and 3pty. pltf. memorandum of law.
ar.6-74	Filed pltfs. statement pursuant to Rule 9(g).
p.16-74	Filed pltfs. ... law in opposition to motion for a stay.
ep.16-74	Filed defts. ... memorandum in support of motion to stay.
ep.16-74	Filed defts. ... of law in support of motion to stay proceedings.
p.16-74	Filed pltfs. ... of law in opposition to motion for stay on reparument.
ep.16-74	Filed pltfs. affdt. of Daniel Sullivan
t. 10-74	Filed ... The 3pty. deft. Cook's motion for summary judgment is ... on the reasons stated. So ordered,Stewart,J. m/n
ct.22-74	Filed deft.Austin Navigation Corp. notice to take deposition of pltf. on Nov. 19,1974.
ct.22-74	Filed deft. Austin Navigation Corp. notice to take deposition of 3pty. deft. Cook Industries on Nov. 19,1974.
t.25-74	Filed pltfs.answers to defts. interrog.
1-21-75	Filed consent order permitting filing of amended 3rd pty complaint. -- Stewart, J.
-30-75	Filed deft. ... 3rd pty. pltf amended third ... complaint
5-28-75	Filed ANSWER of plt., to interrog. HE
	PRE-TRIAL CONFERENCE HELD BY ...
06-24-75	Filed ANSWER of 3rd-pty deft., to amended 3rd-pty complaint HRCLS
7-22-75	Filed 3pty pre-trial memorandum
7-17-75	Filed stip. and order that by order of this Court dated 12-6-73 that the above (entitled actions 73civ 250 and 73 civ 251) were consolidated for all purpose under the caption of 73 civ. 250.--Stewart, J. (for pltfs)
-23-75	Filed pltfs memorandum

CIV 250 - (73 CIV 251 consolidated with this action for all purposes)
[illegible] Oil Co., Ltd., et.al. v.
Norma, her engines, etc.

30 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment No.
4-75	Filed deft. and 3rd pty pltf's memorandum of law.	
10-76	Filed OPINION #43908 ..(for consolidated actions 73-250 and 73-251) The two actions having been submitted to the Court on a stipulated record. Plaintiffs' failing to offer any evidence of Austin's activities, have not met their burden of showing that any of Austin's actions were a competent cause of the loss. We find Austin is not liable to plaintiffs for the shortage. Plaintiffs' complaint against Austin is dismissed; Austin's 3rd pty complaint against Cook is also dismissed. So ordered. - Stewart, J. /n	

THIS ACTION CONSOLIDATED INTO 73-250 FOR ALL PURPOSES, STEWART J.

JUDGE STEWART

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev.

73 Civ. 250

TITLE OF CASE	ATTORNEYS
SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HUNG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD., Plaintiffs, -against- COOK INDUSTRIES INC., Defendant.	For plaintiff: BIGHAM, ENGLAR, JONES & HOUSTON 99 John Street New York, N.Y. 10038 RE 2-4646 For defendant: Hill, Rivkins, McGown & Carey, Esqs. [illegible] Fulton St. [illegible], NY 10038 [illegible]

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	
J.S. 7 mailed	Clerk	1/16/73	Bigham, E.	15 —	
J.S. 6 mailed	Marshal	1/19/73	US Treas	—	10
Basis of Action: Breach of contract to sell soybeans to be shipped to Europe on the S.S. NORMA	Docket fee				
Action arose at:	Witness fees				
	Depositions				